

COMPACT OF FREE ASSOCIATION

HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

TO RECEIVE TESTIMONY REGARDING THE COMPACT OF FREE ASSOCIATION WITH THE FEDERATED STATES OF MICRONESIA AND THE REPUBLIC OF THE MARSHALL ISLANDS

JULY 15, 2003



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COMPACT OF FREE ASSOCIATION

TUESDAY, JULY 15, 2003

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 2:38 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Pete V. Domenici, chairman, presiding.

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. The hearing will please come to order.

The purpose of this hearing is to receive testimony regarding the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands. I appreciate the attendance of my fellow committee members. Thank you all for coming, and I particularly thank you, Senator Bingaman, as ranking member of the committee.

We have two panels today. We will start with panel number one. As I call you, would you please take your seat at the table?

I would like to welcome our witnesses from the first panel. First, Mr. Albert Short is the Director of the Office of Compact Negotiations, Bureau of Eastern and Asian Public Affairs, the U.S. Department of State. Next, Mr. David B. Cohen, Deputy Assistant Secretary for Insular Affairs, U.S. Department of the Interior. Then Ms. Susan B. Westin, Managing Director, International Affairs and Trade Office, the General Accounting Office. Thank you for being here.

I had an opportunity, Senators, to speak with Mr. Short in the presence of Mr. Cohen today, and informed them that their statements will be made part of the record. Then they can proceed with their testimony.

Let me first say to Mr. Short, I have had occasion prior to this hearing to be briefed on the matter before us. I compliment you and the others in the Federal Government for the work that was done, and also those witnesses on the second panel who represent the Freely Associated States.

I'd like to begin with a brief opening statement. We are going to examine the administration's proposed amendments to the Compact of Free Association with the Republic of the Marshall Islands—the RMI—and the Federated States of Micronesia—the FSM.

S.J. Res. 16, the legislation introduced yesterday by myself and Senators Bingaman, Craig, and Akaka on behalf of the administration would extend the Nation's unique relationship with our Pacific allies for the next 20 years. With the Compact's September 30 deadline rapidly approaching, both chambers will need to move as expeditiously as possible to complete action.

I would like to extend a special welcome to our friends on the second panel from the Freely Associated States, the Honorable Gerald Zackios from the Marshall Islands; and the Honorable Sebastian Anefal from Micronesia.

I know that you have traveled a long way to come before us. I look forward to hearing your testimony.

The amended compact continues what I think is a remarkable relationship first forged after World War II. As U.N. trustee, the United States aided the islands' transition into self-governing nations. With the 1986 compact, the citizens of RMI and FSM elected to maintain the bond enjoyed between our countries. Indeed, for the past 17 years, the compact has governed our mutual defense interests and has sought to achieve political and economic stability for the islands' citizens.

Overall, most would agree that the compact has been a success. At the same time, areas in need of improvement have been identified. The legislation now before us continues U.S. economic assistance, and by establishing trust funds, encourages economic self-reliance. In addition, each nation, including the United States, has increased oversight and accountability responsibilities.

Annual funding is provided to address the migration impacts to neighboring Hawaii, Guam, and the Northern Mariana Islands. In the wake of 9/11, the compact's immigration provisions have been tightened. Finally, the amended compact maintains our defense rights and seeks to continue access to the military facilities at Kwajalein Island for the next 50 to 70 years.

As we begin this hearing today, I am interested to learn more about the status of the negotiations regarding landowners who have yet to sign the Land Use Agreement extension, as well as the administration's plans if such an agreement is not secured. I also have questions regarding the continuation of FEMA eligibility, and access to vital Federal educational programs for FAS citizens.

With the compact set to expire in a matter of weeks, the committee will not examine the nuclear claims issues at this time. However, we will likely conduct an oversight hearing, and I understand the distinguished Senator, Senator Craig, is interested in conducting those, time permitting.

At this time, I would like to submit statements for the record that have been submitted by the Defense Department; from Senator Christopher Loeak, chairman of the Kwajalein Negotiation Commission; and the Representatives from American Samoa.

I would also like to submit the administration's June 3, 2003 response to my request for information on education funding.

Again, thank you all for being here. Let us proceed.

Senator Bingaman.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO**

Senator BINGAMAN. Thank you very much, Mr. Chairman, for having the hearing. I think this is a subject that our committee has had a long tradition of dealing with in a very bipartisan way. I think that is very healthy.

There is a very special relationship between these states and our own country. They are the only foreign nations with U.S. ZIP codes, the only foreign nations whose citizens have the status of being able to live in the United States as nonimmigrants, and the only foreign nations whose financial assistance flows through our Department of the Interior. So we have a special relationship that we value very much. I am confident that if we can get this Compact of Free Association renewed, it will continue for a very long time.

I do note that a lot of experts have participated in getting this together. The General Accounting Office in particular has completed over half-a-dozen reports to help us get to this stage. I very much appreciate that. There is a deadline, as you pointed out, at the end of September, about 11 weeks away, for us to get this done, so we need to move ahead quickly.

[The prepared statement of Senator Bingaman follows:]

PREPARED STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO

Mr. Chairman, thank you for holding this important hearing on legislation to amend the Compact of Free Association with the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI), and welcome to our witnesses.

First, I'd like to associate myself with the Chairman's remarks and to point out the Committee's tradition of bi-partisanship in this area of public policy. Chairman James McClure and Ranking Member Bennett Johnston worked closely during consideration of the Compact in 1986, and Chairman Murkowski and Senator Akaka travelled extensively in the islands examining many of the issues we will be considering today.

Second, I'd like to recognize the special nature of the relationship that exists between the United States and the people of the former United Nations Trust Territory of the Pacific Islands. These are, after all, the only foreign nations with U.S. ZIP codes, the only foreign nations whose citizens have status to live in the U.S. as non-immigrants, and the only foreign nations whose financial assistance flows through the U.S. Department of the Interior.

This special relationship began in 1944 when Marshall Islands' scouts assisted U.S. forces in ending Japan's occupation of the islands. It continues today with the hundreds of Micronesians and, Marshallese who serve in the U.S. military, including those who put their lives on the line every day as a part of United States forces in Iraq.

During 40 years of U.S. Administration under the Trusteeship, the islands also played a crucial role in the development of the United States' nuclear weapons and strategic missile capabilities—cornerstones of our nation's military strength.

As Administrator, the U.S. had responsibility to advance the political, social, and economic development of the inhabitants, but after the United States discharged its responsibilities to the United Nations, we have continued for 17 years to work together, under the Compact, as partners to maintain mutual security and to advance economic self-sufficiency.

As our nation debates the topic of nation-building, we should recall our 60-year experience in Micronesia. We have achieved our mutual political and security objectives, but economic development has taken more time and resources than anticipated. Assuring continued economic growth and stability will take the continued commitment not only of our three nations, but also that of others with an interest in the region, such as the Asian Development Bank, which has provided valuable technical expertise and financial resources.

I'd like to commend everyone who has worked on these agreements over the past four years, including the experts at the General Accounting Office who have completed over half-a-dozen reports in support of this effort. This legislation appears to be a thorough job on a tremendously difficult and complex task. Congress now has the challenge of considering all of these documents, and not a lot of time in which to complete action. The deadline for assistance under the Compact is just 11 weeks away.

Mr. Chairman, I look forward to hearing from our witnesses, and to working closely with you to meet this ambitious schedule.

Thank you again for having the hearing.

The CHAIRMAN. Thank you.

How about the other two Senators? Senator Craig?

**STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR
FROM IDAHO**

Senator CRAIG. Mr. Chairman, I will be very brief. You have clearly spelled it out, as has our ranking member, the importance of the Compact of Free Association between the United States and Micronesia and the Republic of the Marshall Islands.

I think it is important to again say that security and self-governance for these nations has been dealt with. The security, certainly as it relates to our national security rights, has been dealt with effectively through the agreements, the relationships and the treaty. What is at hand is assistance in the island's efforts to advance economic self-sufficiency. That is critical.

This committee probably has more authority over the lives of the people on these island nations, and of these citizens than almost any other citizen in our country. Certainly, holding these hearings is critical as we move towards reinstating this important treaty and relationship with these nations.

I call them nations, and I mean that. I respect them in that regard, and their relationship with us is critical. Thank you.

The CHAIRMAN. Thank you very much, Senator.

Senator Akaka.

**STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR
FROM HAWAII**

Senator AKAKA. Thank you very much, Mr. Chairman. It is with great pleasure and maybe even celebration that we are here at this moment to have a hearing on the compact, which has been difficult at times.

But I want to welcome our witnesses on the first panel: Colonel Al Short, Director of the Office of Compact Negotiations with the Department of State; Mr. David Cohen, Deputy Assistant Secretary for Insular Affairs for the Department of the Interior; and Ms. Susan Westin, from the Government Accounting Office.

I also want to take time to welcome the witnesses who traveled from the Federated States of Micronesia in the second panel: the Honorable Sebastian Anefal, Secretary, Department of Economic Affairs; and Honorable Gerald Zackios, Minister of Foreign Affairs.

The last hearing held on this issue by this committee was in December 2001. I remember it clearly because I was forced to leave my office due to anthrax contamination in the Hart Office Building. Given the circumstances, it seemed difficult to hold a hearing; but

Chairman Bingaman at that time agreed that a hearing was necessary, given the importance of the issue.

At that time, I stressed the importance of Congress receiving in a timely manner the proposed legislation codifying the negotiated agreements pertaining to the Compact of Free Association between the United States and the Republic of the Marshall Islands and the Federated States of Micronesia.

For the past 3 years, we have been focused on the September 30, 2003 date of expiration of title II of the compact. While I am disappointed that it took until July 2003, for us to receive the legislative proposal, I am glad that it is finally here, and I congratulate Minister Zackios, Secretary Anefal, and Colonel Short for the completion of what has been a challenging negotiation process.

As many of you know, the Pacific islands hold a special place in my heart, not only because I come from Hawaii, but because I spent time in what is now the RMI and FSM during World War II and after the war. I have long-standing relationships with the people of these nations, and care deeply about U.S. policies affecting the RMI and FSM.

While the compact has been successful in guiding transition of the RMI and FSM from U.N. trust territories to independent nations, and in preserving the national security interests of the United States, RMI, and FSM, it has not been as successful in the area of economic development and economic self-sufficiency.

As I'm sure we will hear from our witnesses this afternoon, provisions have been included in this legislative proposal to address some of the shortcomings of the first compact with respect to granting procedures and accountability, both on the part of the United States as well as RMI and FSM.

I must emphasize, Mr. Chairman, the importance of improving the health and education infrastructure in RMI and FSM. We must support local efforts to improve the medical facilities and schools in these nations. I believe it is imperative to continue eligibility for citizens of the Freely Associated States in Federal programs, including Head Start, Pell grants, the Individuals with Disabilities Education Act, the No Child Left Behind Act, bilingual education, and adult and vocational education.

We also must examine eligibility for medical programs to address the prevalence of diabetes and cancer in FAS. I cannot stress the importance of these programs to the U.S. investment in these islands and to our commitment to helping these nations to be economically self-sufficient.

As my colleagues may be aware, the compact has had a significant impact on the State of Hawaii since 1986. The original compact authorized funds to offset the costs of FAS citizens in the State of Hawaii. We did not, however, begin receiving compact impact reimbursements until fiscal year 2002, and even then it was minimal compared to the amount the State expended over the past 15 years.

During a briefing in March 2003, the Bush administration was unable to tell me how it reached the \$15 million figure, which is the amount of funding to be distributed among the State of Hawaii, the Commonwealth of Northern Mariana Islands, American Samoa, and Guam for compact impact costs.

I have been working on this issue for the past 2 years to find a way to more appropriately reimburse the jurisdictions who have absorbed costs associated with FAS citizens in their jurisdiction. I have been working with Hawaii's Governor, our Attorney General, and the State agencies who are bearing the majority of the costs, including the Hawaii departments of education, health, and human services.

We also must address medical debt owed to Hawaii's hospitals and medical providers. The compact authorizes funding for the payment of medical referral debt prior to 1985. Given the significant amount of debt owed to Hawaii's hospitals and medical providers, I plan to propose a similar provision which will authorize funding to be provided to the FSM and RMI to repay the medical referral debts incurred prior to 2003.

I look forward to starting to review this proposal in the next 8 weeks, and our first obligation is to ensure that this legislation is consistent with the intent of the Compact of Free Association. We must ensure that it contains sufficient funding and support to meet the goal of assisting the RMI and FSM to achieve economic self-sufficiency in 20 years. We must also ensure, however, that the jurisdictions impacted by the compact are appropriately reimbursed.

I look forward to working with all of my colleagues, and to the testimony of today's witnesses.

The CHAIRMAN. Let's proceed.

Mr. Short, your testimony has been made part of the record. Would you abbreviate it for us, please?

**STATEMENT OF ALBERT V. SHORT, DIRECTOR, OFFICE OF
COMPACT NEGOTIATIONS, BUREAU OF EAST ASIAN AND
PACIFIC AFFAIRS, DEPARTMENT OF STATE**

Mr. SHORT. Mr. Chairman, members of the committee, thank you for this opportunity to testify on the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands.

The original compact, the Compact of Free Association with the FSM and RMI, established a political relationship that is open-ended. The original 15-year compact funding authorization, however, ended in fiscal year 2001, with a 2-year extension through 30 September of this year.

The original compact successfully met its main goal of providing for a stable transition from United Nations trusteeship to sovereign self-government for the FSM and the RMI. At the same time, the compact protected U.S. security interests in the Pacific by our assumption of defense responsibilities for this vast sea and airspace, and ensured access to important Department of Defense sites at Kwajalein Atoll in the Marshall Islands.

The original compact was successful in transforming the relationship between these islands and the United States to one of our closest bilateral relationships.

The current compact assistance.

The United States currently provides assistance in three ways: financial assistance under the compact, Federal programs and services under the compact, and Federal programs apart from the compact.

The United States provides about \$160 million annually in financial assistance, 80 percent from the compact and 20 percent from other Federal agencies such as the Departments of Health and Human Services, Education, Labor, and Agriculture.

Reasons to continue the compact assistance. The United States has strong interests in these countries that justify continued economic assistance, and these include: advancing economic self-reliance; improving health, education, and social conditions; sustaining political stability and close ties; and assuring that our strategic interests continue to be secured, including access to important defense sites at Kwajalein Atoll.

Our economic assistance. The administration recognizes that too sharp a reduction in U.S. assistance at this stage of development could result in economic instability and other disruptions, and could encourage an increase in the level of migration under the compact to the United States. The compact, as amended, will continue economic assistance from fiscal year 2004 through fiscal year 2023.

Furthermore, the economic package includes annual contributions to trust funds that will provide an ongoing source of revenue when the grant assistance ends in fiscal year 2023. Federal services and program assistance also continues unless otherwise provided by the Congress. Compact funding will ensure economic and social stability, and a smooth transition in fiscal year 2024 when the trust fund becomes a source of revenue. These amounts are partially adjusted for inflation at the rates of the original compact.

The President's fiscal year 2004 budget includes the funding, \$165.4 million, for the first year of the amended compact; but we also need the authorization for these funds, which is the Compact Act that you are now considering. As pointed out, it needs to be enacted by October 1, 2003.

The administration is putting in place an effective accountability mechanism with respect to future U.S. economic assistance, the details of which will be addressed by Mr. Cohen for the Department of the Interior.

As part of the amended compact, the United States and the Republic of the Marshall Islands agrees to a long-term extension of the military use and operating rights agreement for the ballistic missile test site at Kwajalein Atoll. This extension could run until 2066 and beyond. Mr. Lawless from the Department of Defense has submitted written testimony on our use of Kwajalein and the security and defense aspects of the compact.

Immigration. Based on our experience to date, as well as in the wake of the September 11 attack, we re-examined the immigration provisions of the existing compact. These provisions provide that RMI and FSM citizens "may enter into, lawfully engage in occupations, and establish residence as non-immigrants in the United States."

The amended compact will require FAS citizens to use machine-readable passports, institute child adoption visa procedures, implement visa entry provisions for naturalized citizens, precludes passport sales, and makes explicit our inherent U.S. authority to regulate the terms and conditions of FSM and RMI citizens' stay in the United States.

Lastly, it removes the annual requirement to obtain an employment authorization document and substitutes a multi-year authorization.

In conclusion, thank you for this opportunity to present the administration's views on the compacts we have signed with the FSM and the RMI. Let me assure you that we welcome any and every opportunity to keep the committee informed as you deliberate and proceed on S.J. Res. 16.

[The prepared statements of Mr. Short and Mr. Lawless follow:]

PREPARED STATEMENT OF ALBERT V. SHORT, DIRECTOR, OFFICE OF COMPACT NEGOTIATIONS, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. Chairmen and Members of the Committees: Thank you for this opportunity to testify on the recently submitted Compact Act of Free Association with the Federated States of Micronesia (FSM) and with the Republic of the Marshall Islands (RMI).

THE ORIGINAL COMPACT

The original 15 years of Compact funding authorization for the FSM and RMI ended in Fiscal Year 2001. The Compact provisions provided an extension for up to two years through September 30, 2003, as long as Compact negotiations progressed. The original Compact successfully met its main goal of providing for a stable transition from United Nations Trusteeship to sovereign self-government for the FSM and RMI. At the same time, the Compact protected U.S. security, maritime, and commercial interests in the Pacific by assuming defense responsibilities for the vast sea and air space of the Freely Associated States (FAS) including Palau—and by ensuring access to important defense sites operated by the Department of Defense on Kwajalein Atoll in the Marshall Islands.

The original Compact was also successful in transforming the relationship between these islands and the United States into one of our closest bilateral relationships. We now number the FSM and RMI among our staunchest friends in the United Nations. These achievements are solid and lasting, and the American and FAS peoples can be justly proud of them.

CURRENT COMPACT ASSISTANCE

The U.S. currently provides assistance to the FSM and RMI in three ways: through financial assistance under the Compact; through programs and services that are included in the Compact, such as the services and related programs of the U.S. Weather Service, the Postal Service, and the Federal Aviation Administration; and through programs apart from the Compact that are funded, as Congress sees fit, by other federal agencies. The U.S. currently provides about \$160 million annually in financial assistance to the FSM and RMI, 80 percent from the Compact and 20 percent from other federal agencies outside of the Compact, such as the Departments of Education, Health and Human Services, Labor, and Agriculture.

The past seventeen years have witnessed recurring problems stemming from the lack of accountability and the sometimes ineffective use of Compact Funds. Therefore, a principal task of the recently signed agreements to amend the Compact is to improve the effectiveness and accountability of these funds. Moreover, we have agreed to put an increasing percentage of the annual U.S. Compact assistance into a trust fund that will provide an ongoing source of revenue to the two countries when annual payments by the United States end in 2023.

REASONS TO CONTINUE COMPACT ASSISTANCE

The United States has strong interests in these countries that justify continued economic assistance under the Compact through FY 2023 and the contributions to the trust fund, provided this assistance is structured and managed as proposed. These interests include:

- Advancing economic self-reliance. (In this regard, the United States will continue its commitment to the economic strategies that the RMI and FSM have developed with the support of the United States, the Asian Development Bank (ADB), the International Monetary Fund, and our partners in the ADB Consultative Group, including Japan and Australia);

- Improving the health, education, and social conditions of the people of the RMI and FSM;
- Sustaining the political stability and close ties which we have developed with these two emerging democracies;
- Ensuring that our strategic interests continue to be secured, including access to our important defense sites on the Kwajalein Atoll;
- Putting in place and contributing to a trust fund that will provide an ongoing source of revenue when annual payments by the United States end in 2023;
- Strengthening immigration provisions in the wake of the September 11th attacks and addressing various problems that have arisen since the Compact was first approved by the U.S. Congress; and
- Mitigating the impact of immigration under the Compact on Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

ECONOMIC ASSISTANCE

The Administration recognizes that too sharp a reduction in U.S. assistance at this stage of economic development of the RMI and the FSM could result in economic instability and other disruptions, and could encourage an increase in the level of immigration under the Compact to the United States by citizens of those countries. We continue to believe that providing substantial financial and other assistance under the Compact will help to ensure economic stability while the RMI and FSM continue to implement economic development and reform strategies.

The Compact, as amended, provides for continued economic assistance from Fiscal Year 2004 through Fiscal Year 2023. Furthermore, the economic package provides for annual contributions to a trust fund that will provide an ongoing source of revenue, to be used for the same purposes as the previous grant assistance when the annual grant assistance ends in Fiscal Year 2023. Federal services and program assistance also continues, if provided by Congress.

COMPACT FUNDING

Compact funding will ensure economic and social stability and a smooth transition to Fiscal Year 2024 when annual payments from the U.S. will have terminated and the trust fund becomes a source of revenue.

- Beginning in Fiscal Year 2007, the FSM sector grants decrease by \$800,000 per year through Fiscal Year 2023, with this decrease added to the trust fund.
- The RMI will receive \$30.5 million in sectoral grants, \$5.2 million for Kwajalein impact, and \$7 million for its trust fund annually beginning in Fiscal Year 2004.
- Beginning in Fiscal Year 2005, the RMI sectoral grants decrease by \$500,000 per year through Fiscal Year 2023, with this decrement added to the trust fund.
- These amounts are partially adjusted for inflation: two-thirds of the implicit price deflator will be applied as in the original Compact period.
- Under the Compact, as amended, the U.S. contributions to the trust funds are conditioned on the FSM contributing at least \$30 million to the FSM trust fund prior to September 30, 2004 and the RMI contributing at least \$25 million to the RMI trust fund on the effective date of the Trust Fund Agreement or October 1, 2003, whichever is later, and \$2.5 million prior to October 1, 2004 and another \$2.5 million prior to October 1, 2005.
- Under the Compact, grant assistance will be used for six sectors, with priorities in the education and health sectors and tied to specific outcomes and purposes and monitored by the Department of the Interior.
- Misuse of Compact funds can lead to withholding of funds until the problem is resolved. The FSM and the RMI have agreed to cooperate with the United States on criminal investigations regarding misuse of funds, if necessary.

The Administration is putting in place an effective accountability mechanism with respect to future U.S. economic assistance to the FSM and the RMI under the Compact. Economic assistance will no longer be made available through transfers that co-mingle U.S. funds with local funds, thereby rendering it difficult to track and monitor their use. Instead, future funds under the Compact will be provided through targeted, sectoral assistance, each with a clearly defined scope and objectives.

In the amended Compacts, the FSM, RMI, and U.S. have agreed that any future grant assistance will be used in six sectors:

- health;
- education;
- infrastructure;

- private sector development;
- public sector capacity building; and
- the environment.

Built into each sectoral grant will be regular planning, monitoring, and reporting requirements. The amended Compacts also provide the necessary authority and resources to ensure effective oversight and reasonable progress toward the agreed objectives.

TRUST FUND

A major element of the new Compact provisions is the termination of annual mandatory payments to the FSM and the RMI at the end of Fiscal Year 2023—and the establishment of a trust fund to provide an ongoing source of revenue starting in Fiscal Year 2024. In its earlier proposals to the U.S., both the FSM and RMI anticipated the U.S. interest in the termination of mandatory annual financial assistance by proposing that the U.S. capitalize a trust fund over the next term of Compact assistance. Under the amended Compact, the Administration has agreed that annual U.S. financial assistance will terminate at the end of Fiscal Year 2024, and thereafter the trust fund will provide an ongoing source of revenue. Congress has previously authorized and funded the use of similar trust funds, including one established under the Compact with the Republic of Palau, and several established in the Marshall Islands as compensation for the U.S. nuclear weapons testing program.

FEDERAL SERVICES AND PROGRAM ASSISTANCE

With a few notable exceptions, Federal program coordination and oversight of Compact Funds has been ineffective. We are committed to putting in place a more effective system of coordinating and monitoring that assistance during the amended Compact period.

KWAJALEIN MUORA EXTENSION

As part of the amended Compact, the United States and the Republic of the Marshall Islands have agreed to a long-term extension of the Military Use and Operating Rights Agreement (MUORA) for the Ronald Reagan Ballistic Missile Defense Test Site on Kwajalein Atoll. The Reagan Test Site (RTS) serves a key role in research, development, test and evaluation for the Administration's high-priority missile defense and space programs.

Although the current Military Use and Operating Rights Agreement covering U.S. use of these defense sites runs through 2016, in November 2001, RMI President Note reaffirmed the RMI's willingness to consider a long-term extension of U.S. use of Kwajalein Atoll for our defense needs. Subsequently, the RMI Government proposed that the ongoing negotiations to amend the Compact of Free Association provided a convenient forum to consider amendments extending the Military Use and Operating Rights Agreement. Following consultations with the Department of Defense, the Administration decided to pursue such an extension, if agreement could be concluded on acceptable terms, and negotiations on this issue would not delay our efforts to obtain agreement on amendments to the Compact.

Sections 211 and 212 of Title Two of the Compact, as amended, and the MUORA, as amended, provide for the following:

- The parties agree to extend the MUORA for a period of fifty years from 2016 (the current expiration date) to 2066, with a U.S. option to extend it for an additional twenty years to Fiscal Year 2086.
- To achieve the flexibility necessary to permit the long-term extension of the agreement, the two sides agreed to a schedule of early termination payments if the United States chooses to leave Kwajalein before the end of the agreement. This outcome could be exercised anytime after 2023, on advance notice of at least seven years.
- As Compensation.
- These agreements establish a new series of Kwajalein payments beginning in Fiscal Year 2004 (October 1, 2003) at a level of \$15 million per year (increased from the current \$11.3 million) with a further increase to a new base of \$18 million in 2014. The United States Government is obligated in any case to make payments through Fiscal Year 2023, and thereafter, depending on whether it chooses to continue its use of Kwajalein Atoll. The RMI has assured us that it will endeavor to ensure that payments to landowners are distributed more equitably than they have been in the past in a manner consistent with Marshallese custom and tradition.

- The U.S. will continue paying the \$1.9 million per year in Kwajalein impact money established in the current agreement. However, beginning in Fiscal Year 2004, this payment, which has not previously been adjusted for inflation, will be subject to the provisions of the new Compact Fiscal Procedures Agreement, will be indexed for inflation based on the formula established in the amended Compact, and emphasis will be on addressing the special needs of the Kwajalein landowners most affected by the United States presence on Kwajalein.
- Pursuant to the Compact, U.S. Army Kwajalein Atoll (USAKA) has developed, in cooperation with the RMI Environmental Protection Authority, a strong set of environmental standards and a formal process to review these standards annually and report to both governments. To promote a greater RMI capability for independent analysis of the Survey's findings and conclusions, the U.S. will provide an annual grant of \$200,000 to support increased participation of the GRMI EPA in the Survey.

For some years now, overcrowding on the Kwajalein island of Ebeye, where most of the Marshallese work force supporting the defense sites lives, has created an unmet series of special infrastructure needs for the Marshallese Communities on Ebeye and some other islands of the Kwajalein Atoll. This agreement will address these needs in the following way:

- First, the U.S. and the RMI have agreed that \$3.1 million per year of the RMI grant funding will go towards meeting the special infrastructure and development needs of the Marshallese communities on Kwajalein Atoll. In 2014, this funding will increase to \$5.1 million per year. These funds are indexed according to the Compact Title Two formula.
- Second, considering the \$1.9 million impact funding mentioned above, which is specified by the Compact to offset the impact of U.S. defense activities on Kwajalein Atoll, together with the Ebeye special needs funding, \$5 million per year (increasing to \$7 million in 2014), all of which will be focused on improving the quality of life of the Marshallese communities on Kwajalein, starting October 1, 2004.

In sum, the Administration feels that extending the MUORA, in concert with the provisions of the amended Compact, will promote the economic stability and opportunity of the RMI for the indefinite future.

IMMIGRATION

Based on our mixed experience since the Compact took effect, as well as in the wake of the September 11th attack, we have reexamined the immigration provisions of the existing Compact. Section 141(a) provides that citizens of the RMI and FSM "may enter into, lawfully engage in occupations, and establish residence as a non-immigrant in the United States" without regard to certain grounds of inadmissibility under the Immigration and Nationality Act (INA). Our examination and the subsequent negotiations concluded that the immigration provisions should be amended to:

- Require FAS citizens seeking admission under the Compact to use passports.
- Clarify that immigrant visa procedures, rather than Compact non-immigrant admission, are necessary and appropriate for child adoption cases.
- Limit Compact entry privileges of naturalized FAS citizens to a greater degree.
- Preclude use of passport sales and similar programs from serving as a means for persons from countries other than the FSM and the RMI to obtain visa-free admission privileges under the Compact.
- Make more explicit the authority of the Government of the United States to regulate the terms and conditions of FSM or RMI citizens' admission and stay in the United States, including its territories and possessions.
- Make explicit that the INA applies in full to persons seeking admission to, or the right to remain in, the United States pursuant to the Compact.
- Provide Compact admission privileges to the immediate relatives of FAS citizens in U.S. military service, whether or not the relatives are FAS citizens.
- Streamline the documentation that FAS citizens may use as evidence of work authorization in the United States.

Under the Compact, as amended, the United States will now require passports for FSM and RMI citizens seeking admission as non-immigrants to the United States. Further, naturalized citizens of the FSM and RMI will, with certain limited exceptions, now be ineligible for visa-free admission to the United States. In addition, the Compact, as amended, provides other safeguards to prevent the admission under the Compact of persons from other countries who might seek to exploit the visa-free immigration privileges intended for the citizen population of the FAS. It

addresses explicitly the problem of passport sales and other naturalization schemes designed to provide visa-free admission privileges to persons from countries other than the FSM and the RMI under the Compact. The Compact, as amended, also provides express safeguards for FSM and RMI children who are coming to the United States permanently pursuant to an adoption, or for the purpose of adoption, by requiring that those children possess an immigrant visa. This clarifies the existing U.S. interpretation of the Compact, and brings the provisions relating to the Freely Associated States into harmony with that pertaining to children from other countries concerning child adoptions and protections available to adopted children.

IMPACT

Section 104(e)(2) of the existing and amended Compact statutes requires the President to report annually to Congress on the impact of the Compact. A recent GAO study documents the substantial impact of FAS migration to the State of Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). The amended Compact and other proposed amendments to the Compact Act address the migratory impact issue in three ways:

- First, we will provide \$15 million per year of direct compensation to Hawaii, Guam, American Samoa, and the CNMI for the negative impacts of migration.
- Second, the amended Compacts strengthen immigration provisions to improve our ability to regulate RMI and FSM migrants who are eligible for admission.
- Third, the amended Compacts focus on areas such as improving the health and education of, and private sector jobs for, potential migrants, thereby reducing the impact of migration under the Compact.

The annual impact funding of \$15 million will be:

- a mandatory appropriation for twenty years.
- allocated based on a pro rata formula reflecting a periodic census of Micronesians living in Hawaii, Guam, American Samoa, and the CNMI.

PALAU

The Compact of Free Association between the United States and Palau is not up for review at this time. We believe, however, that it makes sense for us to bring the immigration, labor and trade provisions of the Palau Compact into line with those agreed with the RMI and FSM. In addition, Palau has sought a change to the communications provision to make its telecommunications carrier eligible to participate in the National Exchange Carriers Association and the Universal Services Support Fund. Negotiations are underway on these issues. If we reach agreement, the Administration will submit these amendments to the Congress.

CONCLUSION

Thank you for this opportunity to present the Administration's views on the Compact Act with the FSM and RMI. Let me assure you that we welcome any and every opportunity to keep the Committee informed as your deliberations proceed on the Compact Act.

PREPARED STATEMENT OF RICHARD LAWLESS, DEPUTY ASSISTANT
SECRETARY OF DEFENSE FOR ASIAN AND PACIFIC AFFAIRS

Mr. Chairman, the Freely Associated States (FAS)—the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau—enjoy a special relationship with the United States and with the Department of Defense in particular. With roots in World War II, this relationship grew throughout the Cold War (the FAS played a critical role in the development of U.S. defense programs in the 1950s and 1960s) and continues to this day as FAS islands and citizens contribute to the development of U.S. missile defenses which will guard the U.S. and its friends and allies in the decades to come. Moreover, FAS citizens are also involved in the war on terrorism and in the liberation of Iraq, serving alongside American servicemen and women in the U.S. armed forces.

DEFENSE RELATIONSHIP WITH THE FAS

Our relationship with the FAS is uniquely defined by our responsibility to defend these sovereign nations under the terms of the Compact of Free Association. More clearly, the United States is obligated by the Compact and its subsidiary agreements to provide for the defense of the Freely Associated States in perpetuity, unless there is mutual agreement to terminate the arrangement. We are committed

to defending and providing for the security of these nations and their peoples “as the United States and its citizens are defended.” This is an obligation greater than the United States has assumed under any of its mutual defense treaties. In return, the United States has the right for certain military uses and access, as well as the right to deny access to third countries.

In the absence of the Compact or, more specifically, the Security and Defense Relations Title of the Compact, the Mutual Security Agreement (MSA) still provides for the U.S. defense obligations, U.S. military access, and the denial of military access by third countries. The MSA is indefinite in duration and remains in force until terminated or amended by mutual agreement. The so-called “defense veto” and provisions regarding future base rights, however, are scheduled to terminate with the expiration of the Security and Defense Relations Title of the Compact no later than 30 September 2003 unless this Title is extended. It is in the best interests of the United States to maintain the full range of military access and security engagement options that the Compact provides.

In addition, U.S. rights for access and operations on Kwajalein Atoll were negotiated under the Military Use and Operating Rights Agreement (MUORA) pursuant to, but separate from, the Compact. The MUORA had an original term of 15 years that was due to expire in 2001. Given the importance of the agreement, the U.S. opted in 1999 to extend the MUORA for an additional term of 15 years to 2016.

When it became clear in 2002 that the Government of the Marshall Islands was interested in concluding a long-term extension to the MUORA, the U.S. decided to take the opportunity to secure needed access beyond 2016. The U.S. and the Marshall Islands have since negotiated an extended MUORA which will provide us with continued access to the Kwajalein Atoll defense sites until at least 2066, and possibly to 2086 at the U.S.’ option. It is important to note that, because the Department of Defense was unable to project our specific requirements for Kwajalein Atoll beyond the mid-2020’s, this long-term extension to the MUORA was negotiated with a flexible early termination clause. Under this clause, the DoD can terminate the MUORA as early as 2024 with seven years advance notice. The DoD believes that this clause is a prudent measure that provides us with the necessary flexibility to enter into a 70-year extended term agreement when the specific longer-term uses are not clearly known.

This amended agreement governing U.S. access to the defense sites on Kwajalein Atoll has been negotiated and signed. The RMI Government assures us that they intend to fulfill the terms of this agreement. The Administration is confident that the RMI Parliament will approve this MUORA extension along with the amended Compact. We anticipate that following national elections in the RMI in November, the RMI Government will work out an arrangement with the senior landowners to amend the Land Use Agreement (LUA).

Second, it is important to note that the landowners owning title to land relevant to the Kwajalein defense sites are not a homogeneous group. The RMI Government tells us that there is in fact significant support among many of the landowners for the agreements we have negotiated with the RMI Government.

Under the current MUORA, we have access to these defense sites until 2016 at an already agreed rate of compensation. According to the MUORA, we are obligated to give at least two years notice to the RMI Government if we do not intend to renegotiate the agreement or extend the agreement. In the unlikely event we are not able to agree with the RMI Government now to extend the agreement as we have negotiated, there are ten years between now and when we would need to give the notice to the GRMI of our intent not to renew the agreement. During this time period, we would want to assess the advances in technologies that might give us new options as well as progress in the primary defense programs that are being tested at Kwajalein. Consequently, without the benefit of these insights, which will only be available over the next ten years, it is not possible now to discuss specific alternatives to the missions we currently operate at Kwajalein.

While the Kwajalein lease could have been extended under the MUORA separate from Compact negotiations, the two are nevertheless inextricably linked. The daily routine at the Kwajalein Missile Range and the facilities on Kwajalein Atoll depends upon a favorable working relationship with the people of the Marshall Islands. Provisions of the Compact help provide the basis for U.S. support to the Marshallese people who also provide much of the labor force at Kwajalein. The Compact therefore contributes to a positive local attitude towards Kwajalein.

The primary goal of the Compact and the assistance provided under it is to maintain a unique relationship with the Freely Associated States while helping them to become economically self-sufficient. Continued Compact assistance will nevertheless help to preserve key defense interests while denying access to potentially hostile forces. Continuing the Compact is in the best interest of the United States and the

Freely Associated States. It will help the Freely Associated States continue to work toward their national goals, while serving our national security interests.

STUDY OF DEFENSE INTERESTS IN THE FAS

In 1999, in preparation for the Compact of Free Association renewal, the Department of Defense conducted a study to determine our defense interests in the Freely Associated States for the post-2001 era. The study looked at issues such as the need for continued access, current and future threats, and roles that the Freely Associated States might play in future scenarios. The study found an important defense interest in continuing the use of the Kwajalein Missile Range and the facilities on Kwajalein Atoll. The requirements of our missile defense and space surveillance programs, combined with the uniqueness of Kwajalein's location, and infrastructure investment make renewal of the Compact in the best interest of the Department of Defense.

The strategic environment that surrounded the study has changed greatly over the past four years, but these changes only reinforce the importance of U.S. access to and use of the Kwajalein Missile Range.

QUADRENNIAL DEFENSE REVIEW

The 2001 Department of Defense Quadrennial Defense Review (QDR) recognized that the world has changed and that America must prepare for a wide array of threats to our security at home and abroad. As witnessed by the terrorist attacks of September 11, the future security environment will be marked by uncertainty. The QDR's assessment of the global security environment acknowledges a great deal of uncertainty about the potential sources of military threats, the conduct of war in the future, and the form that the threats and attacks against the U.S. will take. While contending with such uncertainty is a key challenge for U.S. defense planning, certain features and trends of the security environment define not only today's geopolitical and military-technical challenges but also highlight critical operational challenges that the nation's armed forces will need to master in the future. Maintaining the Compact will support our efforts to confront these future challenges by providing us with the right for military use and access and with the right of strategic denial.

The QDR identifies Asia as a region that is gradually emerging as an area susceptible to large-scale military competition. It also identifies an "arc of instability" stretching from the Middle East to Northeast Asia containing a volatile mix of rising and declining regional powers where the governments may be vulnerable to overthrow by radical or extremist internal forces or movements. Many of these states also field large militaries and possess the potential to develop or acquire weapons of mass destruction. The QDR sees a possibility that a military competitor to the U.S. with a formidable resource base may emerge in the region.

Distances in the Asian theater are vast, and the density of U.S. basing and en route infrastructure is lower than in other critical regions. The U.S. has less assurance of access to facilities in the Asia-Pacific region than in other critical regions of the world. The QDR therefore identifies the necessity of securing additional access and infrastructure agreements and developing military systems capable of sustained operations at great distances with minimal theater-based support.

When Secretary Rumsfeld came into office, the President charged him with evaluating U.S. military posture in the world, and the QDR calls for a reorientation of our posture in Asia. The U.S. will continue to meet its commitments around the world, including in Southwest and Northeast Asia, by maintaining the ability to defeat aggression in two critical areas in overlapping timeframes. As this strategy and force planning approach is implemented, the U.S. will strengthen its forward deterrent posture. Over time, U.S. forces will be tailored to maintain favorable regional balances in concert with U.S. allies and friends with the aim of swiftly defeating attacks with only modest reinforcement. A key objective of U.S. transformation efforts will be to increase the capability of its forward forces, thereby improving their deterrent effect and possibly allowing for reallocation of forces now dedicated to reinforcement of other missions.

Inevitably, our ability and flexibility with regard to deploying forces forward will depend on access, which the Compact provides. While it is too soon to say whether the FAS will be considered as candidates for increased U.S. access or basing in the region that the QDR calls for, the fact remains that our rights under the Compact provides for this possibility. In this region of instability and potential conflict, the U.S. right of strategic denial under the Compact, whereby the U.S. can deny third countries access to the FAS, is also significant. Strategic denial effectively creates a stable and secure zone across a broad swath of the Western Pacific. It is reassuring

ing to the Department of Defense in this period of uncertainty to have this stable region in the mid-Pacific in which we can deny access rights to any potentially hostile third country.

MISSILE DEFENSE

Another important change since the 1999 study was the December 2001 announcement by President Bush that the United States would withdraw from the Anti-Ballistic Missile (ABM) Treaty. The President took this step as part of a broader change in our defense policy to reflect new threats that we face. As a result of the withdrawal we are now free to develop, test, and deploy effective defenses against missile attacks from rogue states like North Korea and Iran—states that are investing a large percentage of their resources to develop weapons of mass destruction and offensive ballistic missiles at the expense of the basic needs of their people. The scope of this growing threat to the U.S. and our allies and friends is compounded by the fact that the states that are developing these terror weapons have close links to a variety of terrorist organizations. States or even non-state actors could use container ships to launch shorter-range missiles against our territory. As the President said in his State of the Union Address, we must not allow the world's most dangerous regimes to threaten us with the world's most dangerous weapons.

The missile defense program is now executing an aggressive research, development, test, and evaluation (RDT&E) program focusing on a single integrated ballistic missile defense system designed to defend the territories and deployed forces of the U.S., allies and friends against ballistic missiles of all ranges and in all phases of flight. As previously noted, the Kwajalein Atoll, home to the Ronald Reagan Ballistic Missile Defense Test Site, provides a unique venue for live testing of missiles of all ranges because of its location and specialized, state-of-the art data-gathering devices. Access to the Kwajalein Atoll is currently set to expire in 2016. However, our missile defense and space programs, and including those on Kwajalein, are programs with a long-lead time, we forecasted that we would need Kwajalein well beyond the 2016 date. As we continue to test and develop our missile defense system and capabilities, the Kwajalein Atoll will remain a significant test resource for future missile defense testing.

After considering these changes in the strategic environment since the 1999 study, DoD's reassessment in 2002 determined that the study was still valid. I would argue that the results of the reassessment are somewhat understated. If it is at all possible, I believe that the changes in the strategic environment have only made our defense interests in the FAS even more important.

CONCLUSION

While the end of the Cold War brought about significant changes, it did not alter the strategic importance of the FAS to U.S. national security interests. So long as uncertainty, further unrest, and points of potential military conflict continue to dot the Asia-Pacific landscape, the FAS shall remain strategically important. North Korea's current hostile posture is an unfortunate illustration of the dangerous uncertainty in the region, particularly since North Korea retains the offensive capability of inflicting massive damage on the South in short order. Territorial disputes in the South China Sea and Northeast Asia remain unresolved and provide potential flashpoints. Indonesia's road toward democracy faces challenges as calls for separatism have led to fierce fighting in Aceh and other provinces, and communal violence continues throughout the archipelago. In recent years, we have seen the violent abandonment of the constitutional process in Fiji and in the Solomon Islands, which may soon spiral into a failed state if it does not receive much-needed external assistance. Terrorist forces are present in many countries in Southeast Asia: the Philippines, Indonesia, and even in Singapore.

We must strive to move this region toward peace and stability. Our task is to dampen the sources of instability by maintaining a policy of robust forward deterrence and military presence, while searching for new opportunities to increase confidence and a spirit of common security. In time of peace, our responsibility also extends to taking actions that develop a strategic environment that will sustain this peace and prevent conflict over time. But to sustain this peace and to prevent conflict, we need to continue our defense rights in the FAS.

The CHAIRMAN. Thank you very much, Mr. Short.
Secretary Cohen.

STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY FOR INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Secretary COHEN. Mr. Chairman and members of the committee, I am pleased to appear before you to discuss the proposed legislation to amend the Compact of Free Association with the RMI and the FSM.

Over the 17-year life of the compact, the United States will have paid a total of \$1.04 billion in direct financial assistance to the RMI, and \$1.54 billion to the FSM. There have been few restrictions on this aid. The GAO has issued a number of reports that have raised concerns about the effectiveness of compact assistance.

We at Interior have had similar concerns for quite some time. Our desire for better accountability has been frustrated by the fact that the current compact provides for large, loosely defined grants with no express enforcement mechanisms.

The United States, the RMI, and the FSM have now designed a completely new system to ensure that compact funds are used productively. This system, which features targeted funding, performance measurement, increased oversight, and remedies as a last resort, is explained in greater detail in my written statement.

In order to implement this new program, we are assembling a compact oversight team based in the Pacific. I would also like to address the impact that migration from the Freely Associated States has had on Hawaii, Guam, and the Northern Mariana Islands.

We are requesting \$300 million in mandatory funding to these jurisdictions over 20 years to mitigate the impact of migration. This comes out to \$15 million per year, which is substantially more than what has ever been appropriated in any one year by Congress or requested by any other administration. This is the first time that any administration has proposed mandatory annual funding for compact impact.

The first line of defense against compact impact is the financial assistance that we will provide to the Freely Associated States under the amended compact. The amended compact is designed to address the problems that, according to a GAO report, drive people to migrate: inadequate health care, education, and economic opportunity.

We don't pretend that the amended compact will bring migration to a halt, but we sincerely hope that the people of the Freely Associated States, including those who choose to migrate, will, as a result of our new targeted assistance program be healthier and better educated; and hence, more likely to be net contributors to whatever community in which they choose to live.

I offer a few observations. First, when we talk about accountability, we are not talking about making sovereign states accountable to the United States. Accountability refers to the collective accountability that all three governments share, both to the people of the islands and to the American taxpayer. All three governments have a collective responsibility to ensure that the American taxpayer's money will not be wasted; and, just as importantly, a collective responsibility to deliver on our promise to help the people of the islands to improve their quality of life.

Some might interpret our new accountability program as an admission that the original compact has been a failure. Nothing could be further from the truth. The compact has been a tremendous success. America's former trust territory wards have emerged as free, vibrant, sovereign democracies. These nations have become America's most loyal allies in the world.

Cynics say this loyalty has been purchased with compact aid; but no amount of money could buy the type of loyalty that leads so many of these islands' finest sons and daughters to serve proudly and honorably in the U.S. military, risking their lives to protect the freedom of all Americans.

Mr. Chairman, at this moment 82nd Airborne Army Specialist Hilario Bermanis from Pohnpei lies in Walter Reed Army Medical Center after being gravely wounded in a grenade attack in Baghdad. He has lost both legs and an arm. We all pray for Hilario's recovery, and we thank him so much for the tremendous courage that he has shown in the service of our country.

I visited Hilario yesterday, and I am pleased to report that he has made tremendous progress in the last week alone. He only opened his eyes for the first time after the attack last week, and began to speak about 2 days later. Yesterday, I was able to have a normal conversation with him. Both of his kidneys are now functioning. He is quite an impressive young man, and his fighting spirit is helping him to beat the odds.

As illustrated by the inspiring valor of Hilario Bermanis and other men and women from the Freely Associated States, there is clearly a heartfelt bond between Americans and the peoples of these islands. The compact has only made it stronger.

We Americans value this bond. As for criticism of the original compact, it is important to remember that that document invented a comprehensive new kind of relationship that was completely untested at the time. It should surprise no one, and shame no one, that with the wisdom of 17 years of experience, parties can find opportunities to improve the compact.

The United States and the Freely Associated States are committed to embracing those opportunities, working together as partners to ensure that the promise of these compacts is fully realized for all the people of the islands. Thank you.

[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY FOR
INSULAR AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Senate Committee on Energy and Natural Resources, I am David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs. I am pleased to appear before you today to discuss the Administration's proposal for legislation that would approve amendments to the Compact of Free Association with the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM), which I will collectively refer to as the freely associated states or FAS. These amendments will, among other things, split the current Compact, which is a single, tri-lateral agreement among the United States, the RMI and the FSM, into two bi-lateral Compacts between the United States and the RMI and between the United States and the FSM, respectively.

I will focus my comments on the fiscal and economic provisions of the Compacts and the Fiscal Procedures Agreements, which are subsidiary agreements to the respective Compacts. In particular, I will discuss how proposed amendments to these provisions are designed to address the very legitimate concerns that the General Accounting Office (GAO), the Department of the Interior and others have raised with

respect to the lack of accountability for Federal funds provided under the current Compact.

BACKGROUND

Over the 17-year life of Compact financial assistance, it is expected that the United States will ultimately have paid a total of \$1.04 billion in direct grants to the RMI and \$1.54 billion to the FSM. There have been few restrictions on these grants.

Over the last several years, the GAO has issued a number of reports that have raised concerns about the effectiveness of Federal assistance that has been provided under the Compact. We at the department of the Interior have had similar concerns for quite some time; particularly officials in the Office of Insular Affairs, who have been greatly frustrated with the lack of tools properly to administer or track Federal assistance in a manner that could reasonably ensure that such assistance is having its intended effect. Most importantly, we have been hampered by the fact that the current Compact provides for large, loosely defined grants with no express enforcement mechanisms to ensure the efficient and effective expenditure of funds.

I am pleased that, in negotiating the provisions of the amended Compacts, the United States and its negotiating partners, the RMI and FSM, have sought to address the concerns raised by the GAO, the Department of the Interior and others.

ACCOUNTABILITY PROVISIONS

We have designed a completely new system to ensure that Compact funds are used productively. First, we will target our funding. Compact funds will be available for the following six high-priority sectors only:

- Health
- Education
- Public Infrastructure
- Environmental Protection
- Private Sector Development
- Public Sector Capacity Building

Special emphasis will be given to health and education. The respective Compacts and the related Fiscal Procedures Agreements describe the types of activities that are eligible for funding under each of these sectors. This will enable us to ensure that Compact funds are used exclusively for what the U.S. and our FAS partners have jointly identified as high-priority activities.

Second, the U.S. and its FAS partners will work together to control Compact budgets, including the allocation of funds among the six sectors, to ensure that the objectives of the Compact are being properly pursued. The process will work as follows: Each year, the RMI and FSM will propose their respective Compact budgets. Those proposals must be approved by bilateral joint committees—a U.S.-RMI joint committee for the RMI Compact and a U.S.-FSM joint committee for the FSM Compact. Each joint committee will include three members from the U.S. and two from the applicable freely associated state. The joint committees will ensure that the Compact budgets conform to the letter and spirit of the respective Compacts.

Third, we will require planning to ensure that Compact budgets further medium- and long-term goals and objectives. Each FAS will be required to prepare and periodically update various plans, which will be subject to the approval of the applicable joint committee. The Compact budgets will be expected to be consistent with these plans.

Fourth, we will give oversight personnel at the Department of the Interior the tools to protect against waste, fraud and abuse. The sector grants will be subject to terms and conditions similar to those applicable to Federal grants provided to state and local governments in the United States. The provisions designed to protect Compact funds include:

- The right of the U.S. to unilaterally impose certain special conditions, including additional reports, monitoring and prior approvals, in the event that a grantee has a history of unsatisfactory performance or is not financially stable.
- The right of the U.S. to withhold payments or suspend or terminate grants under certain conditions.
- The requirement that the FAS be subject to annual audits, and the right of the U.S. to conduct specific audits as it deems necessary.
- The right of the U.S. to have full access to all relevant FAS records.
- The requirement that the FAS follow procurement provisions designed to ensure competition, transparency and the avoidance of conflicts.

- The obligation of the FAS to fully cooperate with any U.S. investigation into the misuse of Compact funds.

We do not intend to make these tools the focus of our accountability program. We understand that the key to a successful accountability program is a continued strong relationship with our FAS partners, so that we can work together to ensure that the Compact funds benefit the people that they are intended to benefit. We also understand, however, that it is difficult to predict what will happen over a 20-year period, and it would be imprudent for us to not have the tools necessary to protect the American taxpayers' investment to improve life in the FAS.

The provisions described above will help us to ensure that the Compact funds reach their intended destination. But it will be of little good if the Compact funds reach their intended destination but do not have the intended effect. That is why, as the fifth prong of our new accountability program, we will apply performance standards and measures to each Compact grant. The joint committees will be responsible for applying appropriate performance standards and measures and evaluating performance on the basis thereof.

Sixth, we will provide for strong minimum standards for each FAS's financial management systems, and we will help them to meet these standards with technical assistance provided by my office and with the public sector capacity development grant.

Seventh, we will provide for detailed reporting, so that the U.S. and its FAS partners can track progress and identify any areas of concern.

Finally, the Department of the Interior is in the process of assembling a Compact oversight team based in the Pacific. We are hiring eight additional full-time employees who will focus exclusively on monitoring and oversight of Compact financial assistance and coordination with other Federal agencies providing program assistance to the FAS.

Additionally, Mr. Chairman, I would like to address the very important question of the impact that migration from the RMI, FSM and Palau, as authorized by the current Compacts, has had on Hawaii, Guam, the Northern Mariana Islands and American Samoa. Migrants have made important contributions to Hawaii and the territories, but have placed additional burdens on the local governments because of their utilization of services. The GAO reported significant outlays by these United States jurisdictions in aid of migrants and their families. With this history in mind, the legislation before you today includes \$15 million in annual mandatory funding as a contribution to these United States jurisdictions to mitigate the impact of migration.

While this \$15 million will be applied directly to address the impact of migration on United States jurisdictions, the financial assistance that we will provide to the FAS under the amended Compact is really the first line of defense against this impact. The GAO found that migration from the FAS is motivated mainly by the lack of proper education, health care and economic opportunity. The amended Compact is designed to address the problems that drive people to migrate: The targeted funding gives priority to health and education and also supports activities that are designed to promote economic development. We do not pretend that the amended Compact will bring migration to a halt, but we sincerely hope that the people of the FAS, including those who choose to migrate, will, as a result of our new targeted assistance program, be healthier and better educated and hence more likely to be net contributors to whatever community in which they choose to live. Thus, the legislation seeks to improve the conditions that lead to migration from the FAS and ameliorate the effects of migration to the United States when it occurs.

OBSERVATIONS

Now that I have described our new program, Mr. Chairman, I would appreciate the opportunity to offer a few observations.

My first point is that when we talk about accountability, we are not talking about making the sovereign freely associated states accountable to the U.S. "Accountability" refers to the collective accountability that all three governments share both to the people of the islands and to the American taxpayer. All three governments have a collective responsibility to ensure that the American taxpayer's money will not be wasted, and, just as importantly, a collective responsibility to ensure that we deliver on our promise to help the people of the islands to improve their quality of life.

Although there will always be some who are initially resistant to change, there is widespread support in all three governments for the new accountability provisions. In fact, some of the most enthusiastic supporters are government "line managers" in the RMI and the FSM—those with the day-to-day responsibility for delivering public services to the people. These managers have endured years of frustra-

tion, struggling to keep essential programs going while knowing that a more productive allocation of Compact funds could have made their jobs easier.

A few have expressed concern that the new accountability provisions are harsh, and that the FAS are not equipped to comply with them. We disagree. The new provisions include standard remedies for waste, fraud and abuse. These remedies are the same ones to which state and local governments in the United States are subject when they receive grants from the Federal government. The RMI and FSM have had considerable experience with numerous United States Federal programs and these same remedies. I stress again, however, that the key to our accountability program is not the remedies that could conceivably be exercised in the worst case scenario, but the strong, cooperative relationship that we have with our partners in the islands.

In order to strengthen their ability to comply with the new requirements, the FAS may use Compact funds for appropriate training, software, equipment and guidance. For example, Compact funds could be used to purchase financial management systems, to provide training and hands-on guidance for local personnel or to supplement local personnel with outside experts.

The bottom line, Mr. Chairman, is that all three governments want to ensure that the people of the RMI and FSM receive the full benefit of the Compact assistance program. We can only achieve this with a strong accountability program. The U.S. cannot do it alone: We could not place sufficient personnel on the ground to properly do this job all by ourselves without seriously interfering with the sovereign governmental operations of our FAS partners, conjuring unfortunate images of a return to the old Trust Territory days. The FAS cannot do it alone: They are still in the process of developing the capacity to fully protect against the possibility of waste, fraud and abuse, and to properly measure the effectiveness of Compact-funded activities. All parties recognize that we need to work together to achieve the objectives that we all share.

BUILDING ON SUCCESS

Some might interpret our new accountability program as an admission that the original Compact has been a failure. Nothing could be further from the truth. The Compact has been a tremendous success. America's former Trust Territory wards have emerged as free, vibrant, sovereign democracies. The United States has achieved its strategic objective of denying other powers control over vast areas of the Pacific. The freely associated states have benefited from the United States defense umbrella, and their people enjoy the right to live, work and study in the United States. Significantly, these nations have become America's most loyal allies in the world.

Cynics say that this loyalty has been purchased with Compact aid. No amount of money, however, could purchase the type of loyalty that leads so many of these islands' finest sons and daughters to serve proudly and honorably in the United States military, risking their lives to protect the freedom of all Americans. Mr. Chairman, at this moment, 82nd Airborne Army Specialist Hilario Bermanis from Pohnpei lies in Walter Reed Army Hospital after being gravely wounded in a grenade attack in South Baghdad. He has lost both legs and an arm. We all pray for Hilario's recovery, and we thank him so much for the tremendous courage that he has shown in the service of our country. As illustrated by the inspiring valor of Hilario Bermanis and other men and women from the freely associated states, there is clearly a heartfelt bond between Americans and the people of these islands. The Compact has only made it stronger. We Americans value this bond.

As for criticism of the original Compact, it is important to remember that that document invented a comprehensive new kind of international relationship that was completely untested at the time. It should surprise no one, and shame no one, that with the wisdom of 17 years of experience, the parties can think of ways to improve the Compact. The financial assistance and accountability provisions of the original Compact provide some opportunities for improvement. The United States and the freely associated states are committed to embracing those opportunities—working together, as partners, to ensure that the promise of these Compacts is fully realized for all of the people of the islands.

The CHAIRMAN. Thank you very much, Mr. Cohen.
Ms. Westin, would you please give us your testimony.

**STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR,
INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNT-
ING OFFICE**

Ms. WESTIN. Mr. Chairman and members of the committee, I am pleased to be here today to testify on the Compacts of Free Association that the United States recently signed with the Federated States of Micronesia and the Republic of the Marshall Islands.

Specifically, I will discuss three main topics: one, the potential cost to the U.S. Government; two, changes to both the structure and levels of future assistance; and three, changes in accountability addressed in the amended compacts and related agreements.

Turning to the first topic, the potential cost of the amended compacts.

The amended compacts of free association with the FSM and the RMI to renew expiring assistance would require about \$3.5 billion in funding over the next 20 years, with a total possible authorization through 2086 of \$6.6 billion from the U.S. Congress. These dollar amounts include estimated inflation.

I direct your attention to the chart that we have over here. The share of new authorizations to the FSM would be about \$2.3 billion and would end after fiscal year 2023. The share of new authorizations to the RMI would be about \$1.2 billion for the next 20 years. Further funding of \$3.1 billion for the remainder of the period corresponds to extended grants to Kwajalein and payments related to U.S. military use of land at Kwajalein.

This new authorized funding would be provided to each country in the form of annual grant funds targeted to priority areas, contributions to a trust fund for each country such that trust fund earnings would replace annual grants beginning in fiscal year 2024, payments the U.S. Government makes through the RMI government to Kwajalein landowners to compensate them for the U.S. use of their lands for defense sites, and an extension of Federal services that have been provided under the original compact but are due to expire at the end of 2023.

Further, the administration is proposing to provide \$15 million annually for Hawaii, Guam, and the Northern Mariana Islands for the costs associated with FSM and RMI citizens who migrate to those areas. This would cost an additional \$300 million over the 20-year period.

I will turn to the second topic, changes in the structure and levels of funding.

Under the U.S. proposal, annual grant amounts to each country would be reduced each year in order to encourage budgetary self-reliance and transition the countries from receiving annual U.S. grant funding to receiving annual trust fund earnings begin in 2024.

This decrease in grant funding, combined with FSM and RMI population growth, would result in falling per capita grant assistance over the funding period, particularly for the RMI. The reduction in real per capita funding over the next 20 years is a continuation of the decreasing amount of available grant funds that the FSM and the RMI had during the 17 years of prior compact assistance.

The amended compacts were designed to build trust funds that, beginning in fiscal year 2024, yield annual earnings to replace grant assistance that expires in 2023. Our analysis shows that the trust funds may be insufficient to replace existing grants, depending on assumptions about the rate of return on the trust funds.

Finally, I will discuss provisions in the amended compacts designed to provide improved accountability over U.S. assistance. This is an area where we have offered several recommendations in past years. Most of our recommendations regarding future compact assistance have been addressed with the introduction of strengthened accountability measures in the signed amended compacts and related agreements.

Let me give four examples.

One, the amended compacts would require that grants be targeted to priority areas such as health, education, the environment, and public infrastructure, including funding for maintenance.

Two, grant conditions normally applicable to U.S. State and local governments would apply to each grant.

Three, the United States could withhold payments if either country fails to comply with grant terms and conditions.

Four, joint economic management committees with each country would be established.

I must emphasize, however, that the successful implementation of the many new accountability provisions will require a sustained commitment, including resources, by the three governments to fulfill their roles and responsibilities.

Mr. Chairman, members of the Committee, this completes my prepared statement. I would be happy to respond to any questions.

[The prepared statement of Ms. Westin follows:]

PREPARED STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR,
INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee: I am pleased to be here today to testify on the Compact of Free Association between the United States and the Pacific Island nations of the Federated States of Micronesia, or the FSM, and the Republic of the Marshall Islands, or the RMI.¹ In 1986, the United States entered into this Compact with the two countries after almost 40 years of administering the islands under the United Nations Trust Territory of the Pacific Islands. The Compact has provided U.S. assistance to the FSM and the RMI in the form of direct funding as well as federal services and programs for almost 17 years. Further, the Compact establishes U.S. defense rights and obligations in the region and allows for migration from both countries to the United States. Provisions of the Compact that address economic assistance were scheduled to expire in 2001; however, they can remain and have remained in effect while the United States and each nation renegotiated the affected provisions.²

Today, I will discuss our review of the amended Compacts and related agreements that the United States signed with the FSM and the RMI in May and April of 2003, respectively. (According to a Department of State official, while the original Compact was one document that applied to both the FSM and the RMI, the Compact that has been amended is now a separate Compact with each nation.) Specifically, I will discuss changes to levels and structure of future assistance, including the potential cost to the U.S. government. Further, I will comment on changes in account-

¹The FSM had a population of about 107,000 in 2000, while the RMI had a population of 50,840 in 1999, according to each country's most recent census.

²Other Compact provisions are also due to expire in late 2003 if not renewed. These include (1) certain defense provisions, such as the requirement that the FSM and the RMI refrain from actions that the United States determines are incompatible with U.S. defense obligations (the defense veto) and (2) federal services listed in the Compact.

ability and other key issues addressed in the amended Compacts and related agreements.

Summary

The amended Compacts of Free Association with the FSM and the RMI to renew expiring assistance would require about \$3.5 billion in funding over the next 20 years with a total possible authorization through 2086 of \$6.6 billion from the U.S. Congress.³ The amended Compacts would provide decreasing levels of annual assistance over a 20-year term (2004-2023) in order to encourage budgetary self-reliance. Simultaneously, the Compacts would require building up a trust fund (with contributions that would increase annually) for each country to generate annual earnings that would replace the grants that end in 2023. Per capita grant assistance would fall over the 20-year period, particularly for the RMI. At an assumed trust fund rate of return of 6 percent, in 2024 the RMI trust fund would cover expiring grant assistance, while the FSM trust fund would be insufficient to replace grants. By the year 2040, however, RMI trust fund returns also would be unable to replace grant funding.

The amended Compacts include many strengthened reporting and monitoring measures that could improve accountability if diligently implemented. The amended Compacts and related agreements have addressed most of the recommendations that we have made in past reports regarding assistance accountability. For example, assistance would be provided through grants targeted to priority areas, such as health and education, and with specific terms and conditions attached. Annual reporting and consultation requirements would be expanded, and funds could be withheld for noncompliance with Compact terms and conditions. However, the successful implementation of the many new accountability provisions will require a sustained commitment and appropriate resources from the United States, the FSM, and the RMI.

The amended Compacts address other key issues. One key change to Compact defense provisions would occur U.S. military access to Kwajalein Atoll in the RMI could be extended from 2016 to 2086. This extension would cost \$3.4 billion of the total possible authorization of \$6.6 billion. Further, amended Compact provisions on immigration have been strengthened. FSM and RMI citizens entering the United States would need to carry a passport, and regulations could be promulgated that would impose time limits and other conditions on admission to the United States for these citizens.

Background

The 1986 Compact of Free Association between the United States, the FSM, and the RMI provided a framework for the United States to work toward achieving its three main goals: (1) to secure self-government for the FSM and the RMI, (2) to assist the FSM and the RMI in their efforts to advance economic development and self-sufficiency, and (3) to ensure certain national security rights for all of the parties. The first goal has been met. The FSM and the RMI are independent nations and are members of international organizations such as the United Nations.

The second goal of the Compact advancing economic development and self-sufficiency for both countries was to be accomplished primarily through U.S. direct financial payments (to be disbursed and monitored by the U.S. Department of the Interior) to the FSM and the RMI. For 1987 through 2003, U.S. assistance to the FSM and the RMI to support economic development is estimated, on the basis of Interior data, to be about \$2.1 billion.⁴ Economic self-sufficiency has not been achieved. Although total U.S. assistance (Compact direct funding as well as U.S. programs and

³Although the amended Compacts have been signed by the U.S., FSM, and RMI governments, they have not been approved by the legislature of any country. Therefore, in our testimony we describe the amended Compacts' requirements and potential impact in a conditional manner in recognition that the Compacts have not yet been enacted. The total possible cost to renew expiring assistance in fiscal year 2004 U.S. dollars would be \$3.8 billion on the basis of the Congressional Budget Office's forecasted inflation rate.

⁴The cost of prior assistance in fiscal year 2004 U.S. dollars was \$2.6 billion. This estimate does not include payments for Compact-authorized federal services or U.S. military use of Kwajalein Atoll land, nor does it include investment development funds provided under section 111 of Public Law 99-239. Additionally, the Compact served as the vehicle to reach a full settlement of all compensation claims related to U.S. nuclear tests conducted on Marshallese atolls between 1946 and 1958. In a Compact-related agreement, the U.S. government agreed to provide \$150 million to create a trust fund. While the Compact and its related agreements represented the full settlement of all nuclear claims, it provided the RMI with the right to submit a petition of "changed circumstance" to the U.S. Congress requesting additional compensation. The RMI government submitted such a petition in September 2000, which the U.S. executive branch is still reviewing.

services) as a percentage of total government revenue has fallen in both countries (particularly in the FSM), the two nations remain highly dependent on U.S. funds. U.S. direct assistance has maintained standards of living that are higher than could be achieved in the absence of U.S. support. Further, the U.S., FSM, and RMI governments provided little accountability over Compact expenditures.

The third goal of the Compact securing national security rights for all parties has been achieved. The Compact obligates the United States to defend the FSM and the RMI against an attack or the threat of attack in the same way it would defend its own citizens. The Compact also provides the United States with the right of “strategic denial,” the ability to prevent access to the islands and their territorial waters by the military personnel of other countries or the use of the islands for military purposes. In addition, the Compact grants the United States a “defense veto.” Finally, through a Compact-related agreement, the United States secured continued access to military facilities on Kwajalein Atoll in the RMI through 2016.⁵ In a previous report, we identified Kwajalein Atoll as the key U.S. defense interest in the two countries.⁶ Of these rights, only the defense veto is due to expire in 2003 if not renewed.

Another aspect of the special relationship between the FSM and the RMI and the United States involves the unique immigration rights that the Compact grants. Through the original Compact, citizens of both nations are allowed to live and work in the United States as “nonimmigrants” and can stay for long periods of time, with few restrictions.⁷ Further, the Compact exempted FSM and RMI citizens from meeting U.S. passport, visa, and labor certification requirements when entering the United States. In recognition of the potential adverse impacts that Hawaii and nearby U.S. commonwealths and territories could face as a result of an influx of FSM and RMI citizens, the Congress authorized Compact impact payments to address the financial impact of these nonimmigrants on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands (CNMI).⁸ By 1998, more than 13,000 FSM and RMI citizens had made use of the Compact immigration provisions and were living in the three areas. The governments of the three locations have provided the U.S. government with annual Compact nonimmigrant impact estimates; for example, in 2000 the total estimated impact for the three areas was \$58.2 million. In that year, Guam received \$7.58 million in impact funding, while the other two areas received no funding.⁹

In the fall of 1999, the United States and the two Pacific Island nations began negotiating economic assistance and defense provisions of the Compact that were due to expire. Immigration issues were also addressed. According to the Department of State, the aims of the amended Compacts are to (1) continue economic assistance to advance self-reliance, while improving accountability and effectiveness; (2) continue the defense relationship, including a 50-year lease extension (beyond 2016) of U.S. military access to Kwajalein Atoll in the RMI; (3) strengthen immigration provisions; and (4) provide assistance to lessen the impact of Micronesian migration on Hawaii, Guam, and the CNMI.

Amended Compacts Would Alter Assistance Levels and Structure

Under the amended Compacts with the FSM and the RMI, new congressional authorizations of approximately \$3.5 billion in funding would be required over the next 20 years, with a total possible authorization through 2086 of \$6.6 billion. Economic assistance would be provided to the two countries for 20 years—from 2004 through 2023—with all subsequent funding directed to the RMI for continued U.S. access to military facilities in that country. Under the U.S. proposals, annual grant amounts to each country would be reduced each year in order to encourage budgetary self-reliance and transition the countries from receiving annual U.S. grant funding to receiving annual trust fund earnings. This decrease in grant funding, combined with

⁵ U.S. access to Kwajalein Atoll is established through the U.S.-RMI Military Use and Operating Rights Agreement (MUORA). Funding provided for U.S. military access to Kwajalein for the years 1987 to 2003 is estimated, on the basis of Interior data, to be \$64 million for development assistance and \$144 million for the RMI government to compensate landowners for U.S. use of their lands.

⁶ See U.S. General Accounting Office, *Foreign Relations: Kwajalein Atoll Is the Key U.S. Defense Interest in Two Micronesian Nations*, GAO-02-119 (Washington, D.C.: Jan. 22, 2002).

⁷ Typically, nonimmigrants include those individuals who are in the United States temporarily as visitors, students, or workers.

⁸ Payments were also authorized for American Samoa, but impact compensation has not been sought.

⁹ See U.S. General Accounting Office, *Foreign Relations: Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands*, GAO-02-40 (Washington, D.C.: Oct. 5, 2001).

FSM and RMI population growth, would also result in falling per capita grant assistance over the funding period particularly for the RMI. If the trust funds established in the amended Compacts earn a 6 percent rate of return, the FSM trust fund would be insufficient to replace expiring annual grants. The RMI trust fund would replace grants in fiscal year 2024 but would become insufficient for this purpose by fiscal year 2040.

Table 1—ESTIMATED NEW U.S. AUTHORIZATIONS FOR THE
FSM AND THE RMI, FISCAL YEARS 2004-2086

(U.S. dollars in millions)

	FSM	RMI	Total
Fiscal years 2004-2023:			
Grants for priority areas	\$1,612	¹ \$701	\$2,313
Trust fund contributions	517	276	793
Payments for U.S. military use of Kwajalein Atoll land ²	Not applicable	191	191
Compact-authorized federal services ³	167	37	204
New U.S. authorization for 2004-2023	2,296	1,204	3,500
Fiscal years 2024-2086:			
Grants to Kwajalein	Not applicable	¹ 948	948
Payments for U.S. military use of Kwajalein Atoll land	Not applicable	2,133	2,133
New U.S. authorization for 2024-2086	Not applicable	3,081	3,081
Fiscal years 2004-2086, total new U.S. authorizations for the FSM and the RMI	\$2,296	\$4,285	\$6,581

Source: GAO estimate based on information in the amended Compacts. Under the amended Compacts, U.S. payments are adjusted for inflation at two-thirds of the percentage change in the U.S. gross domestic product implicit price deflator.

Note: Numbers may not sum due to rounding.

¹The 1986 U.S.-RMI Military Use and Operating Rights Agreement (MUORA) grants the United States access to certain portions of Kwajalein Atoll and provides \$24.7 million of funding for development and impact on Kwajalein from 2004 to 2016. Approximately \$112 million of the new proposed U.S. grant assistance of \$701 million is for increasing this funding to Kwajalein from 2004 to 2016 and for continuation of the increased level of funding through 2066 and possibly to 2086 if the agreement is extended.

²As part of the 1986 MUORA, the RMI government has also allocated \$162 million of U.S. funding from 2004 to 2016 under this agreement to landowners via a traditional distribution system to compensate them for the U.S. use of their lands for defense sites. The amended Compact increases these payments from 2004 to 2016 and continues the increased level of payments through 2066 and possibly to 2086 if the agreement is extended.

³Federal services authorized in the Compact include weather, aviation, and postal services. Services associated with the Federal Emergency Management Agency have been excluded. An estimate of assistance from the U.S. Agency for International Development's Office of Disaster Assistance has not been included.

Amended Compacts Could Cost the U.S. Government \$6.6 Billion

Under the amended Compacts with the FSM and the RMI, new congressional authorizations of approximately \$6.6 billion could be required for U.S. payments from fiscal years 2004 to 2086, of which \$3.5 billion would be required for the first 20 years of the Compacts (see table 1). The share of new authorizations to the FSM would be about \$2.3 billion and would end after fiscal year 2023. The share of new authorizations to the RMI would be about \$1.2 billion for the first 20 years, with about \$300 million related to extending U.S. military access to Kwajalein Atoll through 2023. Further funding of \$3.1 billion for the remainder of the period corresponds to extended grants to Kwajalein and payments related to U.S. military use

of land at Kwajalein Atoll.¹⁰ The cost of this \$6.6 billion new authorization, expressed in fiscal year 2004 U.S. dollars, would be \$3.8 billion.

This new authorized funding would be provided to each country in the form of (1) annual grant funds targeted to priority areas (such as health, education, and infrastructure); (2) contributions to a trust fund for each country such that trust fund earnings would become available to the FSM and the RMI in fiscal year 2024 to replace expiring annual grants; (3) payments the U.S. government makes to the RMI government that the RMI transfers to Kwajalein landowners to compensate them for the U.S. use of their lands for defense sites; and (4) an extension of federal services that have been provided under the original Compact but are due to expire in fiscal year 2003.

Amended Compacts Would Reduce U.S. Grant Support Annually

Under the U.S. proposals, annual grant amounts to each country would be reduced each year in order to encourage budgetary self-reliance and transition the countries from receiving annual U.S. grant funding to receiving annual trust fund earnings. Thus, the amended Compacts increase annual U.S. contributions to the trust funds each year by the grant reduction amount. This decrease in grant funding, combined with FSM and RMI population growth, would also result in falling per capita grant assistance over the funding period particularly for the RMI (see fig. 1).^{*} Using published U.S. Census population growth rate projections for the two countries, the real value of grants per capita to the FSM would begin at an estimated \$687 in fiscal year 2004 and would further decrease over the course of the Compact to \$476 in fiscal year 2023. The real value of grants per capita to the RMI would begin at an estimated \$627 in fiscal year 2004 and would further decrease to an estimated \$303 in fiscal year 2023. The reduction in real per capita funding over the next 20 years is a continuation of the decreasing amount of available grant funds (in real terms) that the FSM and the RMI had during the 17 years of prior Compact assistance.

The decline in annual grant assistance could impact FSM and RMI government budget and service provision, employment prospects, migration, and the overall gross domestic product (GDP) outlook, though the immediate effect is likely to differ between the two countries. For example, the FSM is likely to experience fiscal pressures in 2004, when the value of Compact grant assistance drops in real terms by 8 percent relative to the 2001 level (a reduction equal to 3 percent of GDP).¹¹ For the RMI, however, the proposed level of Compact grant assistance in 2004 would actually be 8 percent higher in real terms than the 2001 level (an increase equal to 3 percent of GDP). According to the RMI, this increase would likely be allocated largely to the infrastructure investment budget and would provide a substantial stimulus to the economy in the first years of the new Compact.

Trust Funds May Be Insufficient to Replace Expiring Grants

The amended Compacts were designed to build trust funds that, beginning in fiscal year 2024, yield annual earnings to replace grant assistance that ends in 2023. Both the FSM and the RMI are required to provide an initial contribution to their respective trust funds of \$30 million. In designing the trust funds, the Department of State assumed that the trust fund would earn a 6 percent rate of return.¹² The amended Compacts do not address whether trust fund earnings should be sufficient to cover expiring federal services, but they do create a structure that sets aside earnings above 6 percent, should they occur, that could act as a buffer against years with low or negative trust fund returns. Importantly, whether the estimated value of the proposed trust funds would be sufficient to replace grants or create a buffer account would depend on the rate of return that is realized.¹³

- If the trust funds earn a 6 percent rate of return, then the FSM trust fund would yield a return of \$57 million in fiscal year 2023, an amount insufficient to replace expiring grants by an estimated value of \$27 million.

¹⁰ U.S. access to Kwajalein Atoll in the RMI has already been secured through 2016 through a Compact-related agreement. The amended Compact with the RMI extends this funding to 2066, with an additional 20-year optional lease extension at that point.

^{*} Retained in committee files.

¹¹ The level of grant assistance in 2001 was converted into fiscal year 2004 dollars for comparison purposes.

¹² The State Department chose a 6 percent return in order to reflect a conservative investment strategy. This rate of return can be compared with the current average forecasted return for long-term U.S. government bonds of 5.8 percent by the Congressional Budget Office.

¹³ This analysis does not take into account volatile or negative returns. The sufficiency of either the FSM or the RMI trust fund to replace grants has not been tested under conditions of market volatility.

The RMI trust fund would yield a return of \$33 million in fiscal year 2023, an estimated \$5 million above the amount required to replace grants in fiscal year 2024. Nevertheless, the RMI trust fund would become insufficient for replacing grant funding by fiscal year 2040.

- If the trust funds are comprised of both stocks (60 percent of the portfolio) and long-term government bonds (40 percent of the portfolio) such that the forecasted average return is around 7.9 percent, then both trust funds would yield returns sufficient to replace expiring grants and to create a buffer account. However, while the RMI trust fund should continue to grow in perpetuity, the FSM trust fund would eventually deplete the buffer account and fail to replace grant funding by fiscal year 2048.

AMENDED COMPACTS HAVE STRENGTHENED ACCOUNTABILITY OVER U.S. ASSISTANCE

I will now discuss provisions in the amended Compacts designed to provide improved accountability over, and effectiveness of, U.S. assistance. This is an area where we have offered several recommendations in past years, as we have found accountability over past assistance to be lacking.¹⁴ In sum, most of our recommendations regarding future Compact assistance have been addressed with the introduction of strengthened accountability measures in the signed amended Compacts and related agreements. I must emphasize, however, that the extent to which these provisions will ultimately provide increased accountability over, and effectiveness of, future U.S. assistance will depend upon how diligently the provisions are implemented and monitored by all governments.

The following summary describes key accountability measures included in the amended Compacts and related agreements:

- The amended Compacts would require that grants be targeted to priority areas such as health, education, the environment, and public infrastructure. In both countries, 5 percent of the amount dedicated to infrastructure, combined with a matching amount from the island governments, would be placed in an infrastructure maintenance fund.
- Compact-related agreements with both countries (the so-called “fiscal procedures agreements”) would establish a joint economic management committee for the FSM and the RMI that would meet at least once annually. The duties of the committees would include (1) reviewing planning documents and evaluating island government progress to foster economic advancement and budgetary self-reliance; (2) consulting with program and service providers and other bilateral and multilateral partners to coordinate or monitor the use of development assistance; (3) reviewing audits; (4) reviewing performance outcomes in relation to the previous year’s grant funding level, terms, and conditions; and (5) reviewing and approving grant allocations (which would be binding) and performance objectives for the upcoming year. Further, the fiscal procedures agreements would give the United States control over the annual review process: The United States would appoint three government members to each committee, including the chairman, while the FSM or the RMI would appoint two government members.
- Grant conditions normally applicable to U.S. state and local governments would apply to each grant. General terms and conditions for the grants would include conformance to plans, strategies, budgets, project specifications, architectural and engineering specifications, and performance standards. Other special conditions or restrictions could be attached to grants as necessary.
- The United States could withhold payments if either country fails to comply with grant terms and conditions. In addition, funds could be withheld if the FSM or RMI governments do not cooperate in U.S. investigations regarding whether Compact funds have been used for purposes other than those set forth in the amended Compacts.
- The fiscal procedures agreements would require numerous reporting requirements for the two countries. For example, each country must prepare strategic planning documents that are updated regularly, annual budgets that propose sector expenditures and performance measures, annual reports to the U.S. President regarding the use of assistance, quarterly and annual financial reports, and quarterly grant performance reports.
- The amended Compacts’ trust fund management agreements would grant the U.S. government control over trust fund management: The United States would

¹⁴ See U.S. General Accounting Office, *Foreign Assistance: U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development*, GAO/NSIAD-00-216 (Washington, D.C. Sept. 22, 2000) for a review of the first 12 years of direct Compact assistance.

appoint three members, including the chairman, to a committee to administer the trust funds, while the FSM or the RMI would appoint two members. After the initial 20 years, the trust fund committee would remain the same, unless otherwise agreed by the original parties.

The fiscal procedures agreements would require the joint economic management committees to consult with program providers in order to coordinate future U.S. assistance. However, we have seen no evidence demonstrating that an overall assessment of the appropriateness, effectiveness, and oversight of U.S. programs has been conducted, as we recommended.¹⁵

The successful implementation of the many new accountability provisions will require a sustained commitment by the three governments to fulfill their new roles and responsibilities. Appropriate resources from the United States, the FSM, and the RMI represent one form of this commitment. While the amended Compacts do not address staffing issues, officials from Interior's Office of Insular Affairs have informed us that their office intends to post six staff in a new Honolulu office. Further, an Interior official noted that his office has brought one new staff on board in Washington, D.C., and intends to post one person to work in the RMI (one staff is already resident in the FSM). We have not conducted an assessment of Interior's staffing plan and rationale and cannot comment on the adequacy of the plan or whether it represents sufficient resources in the right location.

AMENDED COMPACTS ADDRESS OTHER KEY AREAS

U.S. Military Access to Kwajalein Atoll Could Be Extended Until 2086

The most significant defense-related change in the amended Compacts is the extension of U.S. military access to Kwajalein Atoll in the RMI.¹⁶ While the U.S. government had already secured access to Kwajalein until 2016 through the 1986 MUORA, the newly revised MUORA would grant the United States access until 2066, with an option to extend for an additional 20 years to 2086. According to a Department of Defense (DOD) official, recent DOD assessments have envisioned that access to Kwajalein would be needed well beyond 2016. He stated that DOD has not undertaken any further review of the topic, and none is currently planned. This official also stated that, given the high priority accorded to missile defense programs and to enhancing space operations and capabilities by the current administration, and the inability to project the likely improvement in key technologies beyond 2023, the need to extend the MUORA beyond 2016 is persuasive. He also emphasized that the U.S. government has flexibility in that it can end its use of Kwajalein Atoll any time after 2023 by giving advance notice of 7 years and making a termination payment.

We have estimated that the total cost of this extension would be \$3.4 billion (to cover years 2017 through 2086).¹⁷ The majority of this funding (\$2.3 billion) would be provided by the RMI government to Kwajalein Atoll landowners, while the remainder (\$1.1 billion) would be used for development and impact on Kwajalein Atoll. According to a State Department official, there are approximately 80 landowners. Four landowners receive one-third of the annual payment, which is based on acreage owned. This landowner funding (along with all other Kwajalein-related funds) through 2023 would not be provided by DOD but would instead continue as an Interior appropriation. Departmental responsibility for authorization and appropriation for Kwajalein-related funding beyond 2023 has not been determined according to the Department of State. Of note, the Kwajalein Atoll landowners have not yet agreed to sign an amended land-use agreement with the RMI government to extend U.S. access to Kwajalein beyond 2016 at the funding levels established in the amended Compact.

Amended Compacts Would Strengthen Immigration Provisions

While the original Compact's immigration provisions are not expiring, the Department of State targeted them as requiring changes. The amended Compacts would strengthen the immigration provisions of the Compact by adding new restrictions and expressly applying the provisions of the Immigration and Nationality Act of

¹⁵This recommendation was included in U.S. General Accounting Office, *Foreign Assistance: Effectiveness and Accountability Problems Common in U.S. Programs to Assist Two Micronesian Nations*, GAO-02-70 (Washington, D.C.: Jan. 22, 2002).

¹⁶A few expiring provisions would be extended indefinitely in the amended Compacts. The "defense veto" has been extended. In addition, the ability of FSM and RMI citizens to volunteer to serve in the U.S. military would be extended.

¹⁷Our figure of \$3.4 billion is adjusted for inflation.

1952, as amended (P.L. 82-414) to Compact nonimmigrants.¹⁸ There are several new immigration provisions in the amended Compacts that differ from those contained in the original Compact. For example, Compact nonimmigrants would now be required to carry a valid passport in order to be admitted into the United States. Further, children coming to the United States for the purpose of adoption would not be admissible under the amended Compacts. Instead, these children would have to apply for admission to the United States under the general immigration requirements for adopted children. In addition, the Attorney General would have the authority to issue regulations that specify the time and conditions of a Compact nonimmigrant's admission into the United States (under the original Compact, regulations could be promulgated to establish limitations on Compact nonimmigrants in U.S. territories or possessions).

In addition, the implementing legislation for the amended Compacts would provide \$15 million annually for U.S. locations that experience costs associated with Compact nonimmigrants. This amount would not be adjusted for inflation, would be in effect for fiscal years 2004 through 2023, and would total \$300 million. Allocation of these funds between locations such as Hawaii, Guam, and the CNMI would be based on the number of qualified nonimmigrants in each location.

Mr. Chairman and Members of the Committee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

The CHAIRMAN. Thanks very much. I noticed in putting up the chart you hid a very important person here attending: the former chairman, Senator Bennett Johnson.

Ms. WESTIN. That was certainly not my intention.

The CHAIRMAN. We wanted to tell him we told her to do that. We thought you had been receiving too much visibility.

I gather you have an interest, a client interest, Mr. Chairman. We welcome you. We welcome your attendance.

Senator Bingaman, do you have any questions of any of the witnesses, in any order you would like?

Senator BINGAMAN. Thank you very much, Mr. Chairman. Let me ask a couple of questions.

First, the decline in the assistance level that is anticipated over the next 20 years—I guess I am just concerned that that anticipated decline may not leave these nations with sufficient funds to carry on their essential government operations.

I gather you have analyzed that and decided that is adequate funding. Is that your position, Mr. Short?

Mr. SHORT. Yes, sir, it is. If you look back at the original compact, there was a series of reductions in the compact, but they were in 5-year increments. The Government has found difficulty in accommodating especially the last of these so-called stepdowns.

The declines or the decrements that we have installed in this compact are on an annual basis so that they are smaller over time and easier to adjust to.

If you would go back to the original 1987 compact, at that time we were providing about \$1,500 per capita per year. It is now down to about \$690 to \$620 in the two venues. It will probably drop to somewhere in the range of \$300 to \$400 per capita in another 20 years, which should reflect the increased development of the islands, basically increasing their revenue base.

Senator BINGAMAN. Do either of the other witnesses have a comment on the adequacy of these projected payments?

¹⁸As noted in the background section, FSM and RMI citizens who enter the United States are legally classified as “nonimmigrants”—that is, individuals who are in the United States temporarily as visitors, students, or workers.

Secretary COHEN. I would concur with Mr. Short that these payments should be adequate. It is our hope over a 20-year program if our targeted assistance succeeds in developing the economic infrastructure of the Freely Associated States and increasing economic development opportunities, increasing basic health and education levels, that the Freely Associated States should have a higher degree of self-sufficiency at the end of 20 years.

Senator BINGAMAN. Ms. Westin.

Ms. WESTIN. We have looked at the trend in per capita income for both countries. Frankly, over the life of the former compact, the FSM showed a greater ability to sustain the loss of grant assistance and the stepdowns. You see less of a decline in their per capita income.

I think that the new accountability provisions in the compact will have quite an impact, because as we recorded in one of our first reports, the economic assistance that had been provided under the first compact in the first 15 years that we looked at had not provided the type of economic growth and stimulus you would like to see.

I think it is really important that the grants are now sector grants, targeted to health, education, public infrastructure. I think that the existence of the joint economic management committees will also provide a venue for greater assistance and oversight in the spending of these funds, and we hope lead to greater economic development.

Senator BINGAMAN. Let me ask about programs that FEMA has been operating. As I understand it, the proposal here is to shift those over to the Office of Foreign Disaster Assistance.

I am also informed that the Office of Foreign Disaster Assistance does not replace destroyed or damaged infrastructure. How does this change affect the prospects for economic development? If there is in fact some kind of disaster that destroys infrastructure, how do we propose to assist in the reconstruction of that in such circumstance?

Mr. SHORT. Sir, you are correct in that the administration's proposal you have before you would substitute the Office of Foreign Disaster Assistance for FEMA, that has been operating out there during the trusteeship period and during the last 17 years.

I would note that OFDA, the Office of Foreign Disaster Assistance, has been operative in Palau the entire period their compact has been in effect, and it is a program that the U.S. Government uses everywhere else around the world in foreign disaster assistance and recovery.

This particular program does not have one element that FEMA includes; that is, capital replacement on a matching basis.

Senator BINGAMAN. Do you think that is okay?

Mr. SHORT. We have provided a fund. We have provided \$200,000 a year that we matched by the respective state to accrue a fund that can respond to whatever—whether it is public or private—loss of property.

Senator BINGAMAN. It sounds like a fairly modest amount of money, if there were really any kind of disaster.

Let me also ask about some of the outside-the-compact programs, the Pell Grants and the Head Start. Do we assume that those will

be continued in other legislation? There is no dealing with them in this compact. Do we assume they will be continued by the Congress in the future? If so, if they were not continued, what would be the effect?

Mr. SHORT. Sir, the compact recognizes—and I noted in my opening statement that there are a number of Federal programs that operate in the two Micronesian states outside the context of the compact provisions, but are recognized in the compact. The document you have before you would continue those, but subject to the congressional action. So we are not taking a position on those Federal programs. They exist to the degree that Congress continues to apply them to the FAS, Federated States of Micronesia and the Marshall Islands.

I would note that the chairman incorporated in the record a policy statement that we provided to him recently that laid out the policy with regard to Federal programs and the relationship with the compact.

There have been a series of education programs over the last few years that have been stricken, or Micronesian access to them has been withdrawn. It has had an impact on their educational system.

As you correctly point out, the Pell Grant program, which is scheduled for reauthorization in fiscal year 2004, could have a severe impact in that the land grant colleges, the Micronesian junior colleges, receive the bulk of their funding through the Pell Grant program.

Senator BINGAMAN. So you are taking no position as to whether or not we ought to continue with that funding; but you are just saying if we don't, the ability of that school to continue as it has would be in great jeopardy?

Mr. SHORT. Yes, sir.

And further, the title II funding in the compact was not structured to replace expiring Federal programs, or take the place of any program that is eliminated now or could be eliminated in the future.

Senator BINGAMAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Akaka, do you have some questions?

Senator AKAKA. Yes, sir.

The CHAIRMAN. Senator, I will leave for a few minutes, but I will be right back. I have a couple questions also.

Senator AKAKA [presiding]. Mr. Short, congratulations on completing negotiations. I want you to know that I appreciate your continued willingness to discuss the compact with me and my staff over time and during the negotiating process also. I look forward to continuing to work with you on the compact.

As a follow-up to Senator Bingaman's question, I remain concerned about the fact that the proposal of FEMA does not include continuing program support from FEMA. I notice instead that relief is provided through the USAID program, as Senator Bingaman mentioned.

My only question now is, could you please explain why FEMA's role has been discontinued?

Mr. SHORT. FEMA has had difficulties—first of all, this is a foreign area. FEMA is basically a domestic program. FEMA has encountered a number of problems simply operating in these two

states because it is not the United States, where they are really set up to operate. That is the principal reason.

Senator AKAKA. Do you have any comments about the ability of either trust funds to substantively sustain economic self-sufficiency for FSM and RMI after 20 years, particularly in the light of GAO's testimony that the FSM trust fund would be insufficient to replace expiring annual grants; and that the RMI trust fund would replace grants in fiscal year 2024, but would become insufficient for this purpose by fiscal year 2040? Do you have any comments on that?

Mr. SHORT. I think, as was pointed out in Ms. Westin's testimony, the sufficiency or insufficiency is largely a factor of one's assumptions on rate of return to the point where, at 6 percent rate of return, the numbers may be on the low side; at 7 percent, they are adequate. We feel that the trust funds will provide an ongoing source of revenue that will commence in 2004.

It is important to note that the provisions of the trust fund are set up in such a way that there can be no changed circumstances or no early withdrawals; so all of the resources, both United States and Micronesian, that are contributing to the trust funds will be there and will have earned interest until 2024. The mechanism thereafter is that the corpus will not be touched. Only the proceeds, the annual proceeds will be distributed.

We cannot guarantee a one-for-one replacement, but we feel this trust fund gives them a high degree of assurance of continued economic assistance almost in perpetuity.

Senator AKAKA. In your written testimony, you stated that improving the infrastructure in RMI and FSM will improve the adverse impact of migrations. Can you give your best estimate on how many years it will be before such a benefit becomes viable?

Mr. SHORT. Mr. Cohen might be best to answer that.

Secretary COHEN. Yes, Senator. To be honest with you, I can't give an actual estimate as to how long the process will take. We hope that over time, gradually, we will be improving the conditions, especially health, education, and lack of economic opportunity—which the GAO identified as the primary causes of migration—to an extent where people will be less motivated to migrate.

But it will be very difficult to estimate how long it would take, nor do we even pretend that migration will stop because of our program.

Senator AKAKA. Mr. Short, in your written testimony you list the modified immigration provisions, which improve the United States' ability to regulate RMI and FSM migrants who are eligible for admission as a factor to alleviate the adverse impacts of migration.

I would like to make it clear that the State of Hawaii did not ask for modifications to the immigration provisions to alleviate adverse impacts caused by the migration of FAS citizens to Hawaii. While our criminal system has borne some costs, the majority of our costs are in education and health. Can you clarify how you believe the immigration provisions address adverse consequences of migration?

Mr. SHORT. Sir, let me just give you one example. That is basically reporting of felons between our government and the respective Micronesian governments. We have what we call a watch list, where information is provided by the FAS government. That information, for example, is in Hawaii. If a Micronesian citizen shows

up in Honolulu and he or she is on that watch list or has been previously removed, that person would not be admitted.

So there are some safeguards, first of all, with regard to Micronesian citizens entering the United States. A greater concern is that a third country national somehow could obtain a Micronesian passport of some type, whether through purchase, marriage, or some other device, and then use that to enter the United States.

Senator AKAKA. Mr. Chairman, my time has expired.

The CHAIRMAN. Senator, did you have any more questions?

Senator AKAKA. I do have.

The CHAIRMAN. Go ahead.

Senator AKAKA. Colonel Short, I remain very concerned about efforts made by those who misunderstand the intent of the Compact of Free Association who have sought to eliminate the eligibility of FAS citizens for Federal programs. It seems that we must keep a vigilant watch over any legislation reauthorizing Federal programs to ensure that the eligibility of FAS citizens is not eliminated.

For the record, can you clarify whether or not the provisions intended to improve the educational and medical infrastructure in the legislative proposal were intended to replace the current Federal programs provided to FAS citizens?

Mr. SHORT. I would be happy to respond to that, sir.

Title II support, the economic assistance and the compact, was not structured to substitute for or replace any existing Federal programs. We do not take any position on continuation or reauthorization of those programs. That language is also restated in the policy statement the chairman already entered into the record.

Senator AKAKA. Secretary Cohen, I was pleased to review your comments about increased accountability provisions in the proposed legislation. I think we can all agree that the United States, as well as the RMI and FSM, share the blame for any accountability issues.

I am pleased to see that we have provisions and proposals that improve accountability. I believe a big part of the problem with the grants during the first 17 years of the compact is that policy implementation did not take into account cultural differences. For example, some of the economic development challenges are based on the land tenure system utilized in the FAS. Without taking these issues into consideration, economic development policies will not work.

As you were developing these accountability provisions, what steps did you take to consider implementation of these policies in a culturally sensitive manner? What kinds of provisions are included in the compact to allow for adjustments to the implementation of policies if such modifications are necessary?

Secretary COHEN. Thank you for the question, Senator. The process is structured to give due deference to the priorities that are set by the Freely Associated States themselves, which of course will presumably take into account the cultural context in which the policies will have to exist in.

All of the allocations of the grants are going to be approved by joint committees, so there will be FSM representation on the U.S.-FSM joint committees and there will be RMI representation on the U.S.-RMI joint committee. The United States has three votes and

the Freely Associated States has two votes, but we will be acting together to consider the proposals to allocate compact funds.

But as I noted, the initial proposal to allocate the funds will come from the Freely Associated States themselves. It will not be the job of the joint committee to substitute its judgment for the judgment of the RMI or the FSM. The job of the joint committee will be to make sure that the letter and spirit of the compact is being protected so that the allocations, for example, don't fail to give proper emphasis to health and education, as the compact requires.

By giving due deference to the priorities set by the Freely Associated States, we think we are ensuring that all of the policies will properly account for the cultural context that you are so right to point out.

Senator AKAKA. Mr. Cohen, we have worked closely with your office and the Department of the Interior over the past 17 years to address costs borne by the State of Hawaii, Guam, CNMI, and American Samoa which we refer to as "compact impact."

As you know, Hawaii only started receiving funds 2 years ago, at minimal rates. I am pleased that the legislative proposal includes \$15 million in mandatory funding for compact impact to be distributed annually between Hawaii, Guam, CNMI and American Samoa. This figure doesn't even begin to address the costs borne by these jurisdictions.

I have two questions. One is, how did you determine that the \$15 million would be appropriate for the costs of compact impact aid? Is there any provision in the legislative proposal that would reimburse Hawaii, Guam, CNMI, and American Samoa for the costs incurred over the past 17 years due to the migration of FAS citizens?

Secretary COHEN. Your first question, Senator, how we came up with \$15 million—we don't pretend that the \$15 million is some sort of mathematical estimate that is designed to fully indemnify the State of Hawaii or any of the territories for any costs that may occur on an annually basis.

We basically looked at levels of compact impact funds that had been appropriated by Congress in the past and significantly increased the average amount, and significantly increased even the amount that had been appropriated previously, and felt that was a level we were comfortable with in this fiscal climate.

We are looking more with this \$15 million, or \$300 million over 20 years, to the future. We are looking for a level that we are comfortable committing to on a mandatory basis every year for the next 20 years. We don't know what is going to happen in the future, but this is an amount that will be there no matter what if this legislation is passed.

It doesn't mean that it will necessarily fully compensate the State of Hawaii or any of the other territories for the costs they incur over the next 20 years. But if our program is successful, the next impact of the compact should be much, much less.

As I noted before, hopefully we will dissuade some people from migrating by making conditions better from the Freely Associated States. But also, if the people that do migrate are better educated and are in better health, the impact of migration will be less. There will be more established communities in the State of Hawaii and

the territories that will more likely be net contributors rather than net users of social services.

We have seen when you have strong, established communities with a high rate of employment, that they are clearly net contributors. We are very confident that this is going to happen over the course of this program in the State of Hawaii, as well.

The program is our best effort to help address the impact of migration, but we thought it would be impossible to come up with a mathematical formula to fully indemnify the states and the territories for the impact that they suffer, nor do we think that that would necessarily be appropriate.

Senator AKAKA. Mr. Chairman, I have one last question. But before I ask the question to Ms. Westin, I just recently received a copy of the State of Hawaii's compact impact report for fiscal year 2002, and ask that it be included in the record.

The CHAIRMAN. Without objection.

Senator AKAKA. Ms. Westin, you have testified that the trust funds for RMI and FSM which are proposed in this legislation are inadequate to replace the expiring grant system in 20 years for the FSM. RMI would likely face the same problem in 2040.

How would you recommend we address this issue?

Ms. WESTIN. As Mr. Short has testified, there is nothing in the compact that says that the annual earnings from the trust funds starting in the year 2024 will necessarily completely replace the grant assistance.

Our analysis was just to take a couple of different rates of return to try to get an idea of how close the replacement would be, and then we looked to see that for the FSM, there is not going to be enough money even in 2024 at the 6 percent rate of return, which we understood the State Department to be using as its best assumption of the rate of return.

Furthermore, for the RMI, it would last maybe about 16 years and then run out. But again, there is nothing in the compact that says that full replacement is the objective of the trust fund.

I would point out that we looked at other small island nations that have been helped by other countries. In several of them, a trust fund does seem to be something that has been very useful for them.

Senator AKAKA. Thank you very much.

Mr. Chairman, I want to thank the panel for their responses. That concludes my questioning.

The CHAIRMAN. Panel, I know we are running out of time, and we want to hear the others, some of whom have come from long distances.

First, I have 10 or 15 questions. I will submit them to you. We will try to commit to get this legislation out of this committee in a timely manner and to the floor. Even though we are on a short fuse, we will try very hard. I will ask the leader to make time for it on the floor so we can get it done.

Let me ask a couple of questions that bother me. First, we have all for a long time talked of trust funds. As some of you know, I know a little bit about budgeting, so I know that the Federal Government has 356 trust funds. Most of them are on budget. Every now and then Congress gets a wild idea and takes them off-budget,

and thinks they have done some great act of integrity by taking it off-budget.

But here, this is a most intriguing thing to me that we are talking about a trust fund. I am not suggesting by using the word “intriguing” that I am opposed. It is just that what we are saying is we want to find a way to get around, at a point in time, payments and want to have some money ready to take its place.

We are the same entity that would have made the payments had there not been a trust fund. The United States is going to put money in the trust fund. Had we not had a trust fund, we would be paying money to the island. The United States would be the same source.

Mr. SHORT. Sir, I would like to make a comment on that.

The CHAIRMAN. It is after the \$30 million.

Mr. SHORT. The point I was going to make is that both governments are committed to contribute \$30 million on the front end. That is not a limit on future contributions. Further, the trust fund has a built-in mechanism whereby it can accommodate subsequent contributors, whether that be another government, the Asian Development Bank, or some other outside organization.

The CHAIRMAN. Well, I think I understand. There is not going to be any benevolence around. Nobody is going to be benevolent and contribute.

First of all, the islands cannot contribute more. They are too poor. The U.S. Government is not going to contribute more. If we were going to contribute more, we wouldn't be worried about doing this. If you have read about it today, we only have a deficit of \$452 billion.

Now, I didn't read all this in detail, but most of the trust funds that we have spoken of before, we set them up hoping that they would make more money than by leaving them in the Federal Treasury, where they generally make nothing, just like Social Security.

Do you know how many times we have heard, let's take all their money and put it in the trust fund? And the Social Security answers, we always thought it was in the trust fund. It is not, you understand; it is in the Federal Treasury.

Where is this money going to go?

Secretary COHEN. The money will be invested in actually a fairly limited list of—

The CHAIRMAN. Who is going to be in charge of it?

Secretary COHEN. There is going to be a board. It will likely mirror the joint committees that are responsible for allocation of the compact grants.

The CHAIRMAN. Do we expect this to be a good investment so that it yields good return, or extremely safe and yields little or no return?

Secretary COHEN. Hopefully, somewhere in the middle. The list of permitted investments—which I don't have with me—conceptually I can tell you it is your standard list of fairly safe permitted investments. We are not going to allow speculation in hedge funds or things of that sort.

The CHAIRMAN. Corporate stock?

Secretary COHEN. I am not sure if the stock of private companies is a permissible investment. We can find that information out for you.

The CHAIRMAN. I think you should find out for me.

I think it is pretty obvious to me that the safest fund or the safest place, aside from Treasury bills—which is interesting, because then we set up the trust fund in order not to have the money so we won't have to pay the money later. Then we invest it in ourselves in U.S. Treasury bills. So it would seem to me that would be foolish, other than pretty good paperwork. It should yield more revenue than that.

I think you would probably find that anybody telling you would say that it ought to be invested in common stocks of the U.S. corporations, if you've got a long term.

But you take a look. I can assure you that I will be interested. That is one thing I will be interested in knowing, whether we are going to invest it in such a way that it is most apt to yield the best return. If it is a 1- or 5-year investment, I wouldn't say that; but if it is a 25- or 30-year investment, it has kind of been proven that the best investment going is the corporate stock of the United States.

Now, what are we trying to do? The population of these islands is getting younger all the time, which means the adults leave. Children are born, and of course they don't leave quickly; they stay there. One of the things we must do is educate them better, right?

Secretary COHEN. Yes.

The CHAIRMAN. What are we educating them better for? I am all for that—but what for? Is it so they can leave sooner and get a good job, a better job somewhere, or what?

Secretary COHEN. Mr. Chairman, sir, it is our belief that to the extent that conditions in one's own country are acceptable, economically acceptable, and the quality of life is acceptable, people would rather stay at home than to go to a foreign land. So it is our hope that by improving education and health and economic opportunity—

The CHAIRMAN. Don't put all those in the same boat. Economic opportunity may not follow if there is nothing for economic development to build on. What would the economic development that might occur there be?

Secretary COHEN. We are going to have to explore that over 20 years. Certain things that have been looked at in the past have included, of course, tuna, tuna processing. There have been some attempts—

The CHAIRMAN. Little tiny job numbers, very few; right?

Secretary COHEN. Well, the efforts so far have been modest, but of course we are talking about modest-sized populations.

The CHAIRMAN. I understand. I am most interested in whatever we can do to improve the educational standards, because it does seem to me that if there is one thing we are vulnerable to as a Nation with reference to relationships like this, it would be if we were to continue a relationship knowing that the educational standards are not as good as they ought to be.

Now, as good as they ought to be for what? As good as they ought to be for any adult to attain a good standard of living in this

world; not on these islands only, because there is no work on these islands.

So we wouldn't be concerned if it was just that. It is when they leave there and go wherever they go, to Hawaii, we are hoping that they are educated better so they can get good jobs. Is that correct?

Secretary COHEN. That is our hope. We are hoping to educate people generally.

The CHAIRMAN. Now, let's see. One thing that impresses me, and I wonder if you could tell me how it works, all of the people there have a card that says, "My name is. I am a"—and it says what they are. And they are not American citizens, right?

Secretary COHEN. That is correct, they are not American citizens.

The CHAIRMAN. They go back and forth and show the card. They can have a savings account in America or on the islands, if they like, but they move back and forth with ease. Is that correct?

Secretary COHEN. Yes, sir. They are given the right of migration.

The CHAIRMAN. Do they have to have passports?

Mr. SHORT. Sir, I will address that. The present compact as it now stands does not require a passport to enter the United States. It simply requires some sort of identification. The amended compact that you are considering would require a machine-readable passport to be carried and presented by every Micronesian citizen as they enter the United States.

The CHAIRMAN. Why?

Mr. SHORT. Primarily for security.

The CHAIRMAN. What is dangerous about this situation?

Mr. SHORT. The danger is that these people enter the United States without resort to any sort of quota or visas. They simply show up at a U.S. port of entry and present themselves for entry into the United States. If you were coming—

The CHAIRMAN. Does it have a picture on the card?

Mr. SHORT. They may or may not on these cards.

The CHAIRMAN. Why don't you do that?

Mr. SHORT. The passport—

The CHAIRMAN. Why don't you do that, instead of having a passport?

Mr. SHORT. A passport also is the international indicia of sovereignty, and it is simply the way that countries interact when a citizen from one country travels to another sovereign nation.

The CHAIRMAN. I am telling you, I'm going to be for it if I am convinced that we are not going to have some horsing around. We either have free passage like we have, or we don't. If we don't, we are going to clutter it all up with something, and we ought to make sure that everybody knows that.

Normally, passports clutter up things. That is okay. We have got to have them, but they are not the normal thing that these islanders have had. They have just had these certificates of whatever you call them. They are certificates of non-citizenship, but of residency of their country, right?

Mr. SHORT. In many cases, yes. Many do carry a passport because no other Nation in the world will admit them without a passport.

The CHAIRMAN. The reason that I am so intrigued, I am wondering why we don't do something like this with Mexico, even though

they are not in the same relationship. Why can't a Mexican worker just carry a card, and when he is finished working go home, and when he wants to come back, come back?

As a matter of fact, could I ask, do any of you know whether the current system is working? I'm going to ask if passports would do it; but is it working?

Mr. SHORT. It is working reasonably well. As I indicated in addressing the Senator from Hawaii's questions concerning some of the reasons we have put some of the controls in, it is to control access to the United States by people with criminal convictions, people who have been removed, and that sort of thing.

So it has worked adequately in the past, but it simply does not fit the situation post-9/11 when we simply need to have reasonably stringent controls on our borders. The real concern is that a third-party person, not a Micronesian citizen, could show up at a U.S. port of entry and claim to be a Micronesian and enter the United States.

The CHAIRMAN. Since I don't know, where would most migrant Micronesians enter the United States?

Mr. SHORT. Sir, through two points, either through Guam or Hawaii.

The CHAIRMAN. And do we know, Senator Akaka, is the entry at Hawaii difficult? Is this work? Do you know of serious problems regarding this, or not?

Senator AKAKA. Apparently they have been able to come in rather freely.

The CHAIRMAN. You haven't heard of any exceptional problems regarding this network? They show something and they come in, and when they want to leave, they show something and they leave?

Senator AKAKA. That's correct.

The CHAIRMAN. You are not familiar with Guam, so you don't know.

Senator AKAKA. No.

The CHAIRMAN. I think that is it. I want to thank you. Hard, hard work goes into this. Nobody thanks you all for it. We thank you all for it.

We hope you have the investment provisions right. I would assume you wouldn't have put them in there without talking to the Treasury Department and other people that know about trust funds. Is that correct, Mr. Cohen?

Secretary COHEN. That's correct.

The CHAIRMAN. Thank you very much.

Let's take the next witnesses, The Honorable Secretary of Economic Affairs For Federated States, Sebastian Anafal; and the Honorable Gerald Zackios, Minister of Foreign Affairs, the government of the Republic of the Marshall Islands.

Thank you very much, both of you, and we welcome you.

Mr. Secretary, it is a pleasure having you here. It is good to meet you. Would you please proceed.

STATEMENT OF SEBASTIAN ANEFAL, SECRETARY, DEPARTMENT OF ECONOMIC AFFAIRS, FEDERATED STATES OF MICRONESIA

Secretary ANEFAL. Thank you, Mr. Chairman.

Mr. Chairman and members, I have the honor to appear before you today on behalf of the Federated States of Micronesia, and wish to thank you and members of your committee for holding this important and timely hearing on a matter of utmost importance to my nation.

Mr. Chairman, we joined the United States in signing the compact agreements now before you in May of this year, and look forward to working with members and staff to address concerns we have regarding the proposed legislation.

The sectoral approach to grant assistance in the new agreement is a marked change from past practice. So, too, are the new accountability and oversight requirements which we have welcomed and are committed to.

Along these lines, the FSM proposed the notion of a joint committee to oversee implementation of the compact. The Joint Economic Management Committee, as it is envisioned now, provides a mechanism for constructive and consistent dialogue.

While the U.S. offer of assistance under the compact amendments is generous, the level proposed falls short of the annual basis we have identified as the absolute minimum required to sustain programs.

First and foremost, we are concerned about the level of grant and trust fund assistance. The rationale for the economic package is to establish economic stability throughout the 20-year period and beyond.

We presented our detailed economic analysis to the U.S. negotiator, and the administration has never disputed our analysis. Instead, we were told that the administration proposal is simply the maximum that the United States would offer; in a sense, a political decision, rather than being based on sound economic analysis.

Given the administration's best and final offer and time constraints, we had little choice but to accept the submittal to Congress. However, the sum of annual grant and trust fund contributions falls \$7 million short—on an annual basis—of what we find is the absolute minimum needed to sustain our economy.

While the overall assistance level in the proposed agreement, \$92 million, would seem to represent an increase over the grant level at the end of the previous arrangements, this is misleading. Twenty million dollars of this amount annually is not available in the initial 20 years, as it will be put aside for the trust fund. In addition, beginning in the fourth year, the grant amount available to the FSM will be decreased by \$800,000 annually.

The adequacy of the trust fund is also a profoundly important aspect of our long-term development strategy as it gives our people and potential investors a sense of hope and confidence in a sustainable future. We hope that expressed misgivings along this line will not be ignored.

Our second main concern is the inadequacy of inflation adjustment. FSM seeks the assistance of the Congress in providing full inflation adjustment, and in adjusting the base year to 2001, the last year of the original compact funding.

Another area of concern is the loss of FEMA disaster assistance. Without reinstatement of this important benefit by the Congress,

the substantial investment made to this point by the United States and those to be made over the next 20 years could be lost.

Our fourth concern is the possible loss of eligibility for Federal programs such as the No Child Left Behind, Pell grants, Head Start, and IDEA, among others, which continue to provide critical support to the education and well-being of our people. Continuation of these successful Federal programs is vital. For example, without Pell grants, our college would collapse.

The administration has clarified that its proposal for this amended compact was based on the assumption that Federal programs would continue at their current levels. We hope that Congress in its wisdom will take note of this important policy statement and act to ensure the continuation of these invaluable programs.

Mr. Chairman, during our negotiations we also sought to address nonfinancial methods by which the United States could enhance the FSM's growth prospects for the future. We seek to maintain and modernize tax and trade provisions in the compact that will enhance the economic linkages between our two nations by stimulating private investment.

Finally, the proposal before you includes changes to the non-expiring immigration provisions of the compact. These changes have been made at the insistence of the administration. The FSM fully understands the U.S. concerns over security, and supports the United States in all its positions against terrorism and transnational crime. The FSM wants to do its part to assist the United States in its important task of securing peace and securing its borders.

Mr. Chairman, allow me to turn to elements of the legislation that are not part of the proposed compact amendment.

I want you to know that the FSM was not consulted by the administration in drafting proposed changes to the Compact Act. When we finally were given an opportunity to review the administration's proposed changes, we identified at least three major problems for which we seek adjustments by the Congress.

First, there is the issue of transition to a machine-readable passport scheme. This is a concept to which the FSM has repeatedly pledged its support. However, we find it quite alarming that the administration has seen fit, unilaterally and without prior notice, to set aside \$250,000 from the compacts' capacity-building assistance for this purpose.

Second is that the administration insists on mandating the FSM's development of a more effective immigrant screening system. We are given just 1 year to do this or risk funding loss. Again, the FSM has repeatedly agreed to undertake steps to implement such systems. However—and by all reasonable estimates—it is an extremely complex and expensive undertaking that could not reasonably be completed by FSM in 1 year.

Third, the unilateral changes in the language concern provisions of compensatory Federal programs. In 1986, Congress initiated and passed this language as partial compensation for loss of tax and trade benefits agreed to by the administration.

Unexpectedly, the United States has now proposed to alter the language of the compensatory provisions to make them optional for U.S. agencies. These changes undermine the good faith in which we

have negotiated, and are not indicative of the long-standing good efforts and mutual understanding that we have shared with the United States throughout our history.

Mr. Chairman, I have highlighted a number of problems posed by the compact amendments and the Compact Act proposals. We would like to propose the Congress include in its legislation a provision for a 3-year comprehensive congressional review of the health of the FSM economy to examine whether a need then exists for further adjustments.

In conclusion, Mr. Chairman, the compact was a success. Both the United States and the FSM can be rightly proud of the unique bonds we have forged in the compact period. We hope to be equally proud of the course that will be set for the next 20 years and beyond. We urge Congress to act favorably on the compact legislation, and make the adjustments necessary to ensure a solid foundation for the future.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Anefal follows:]

PREPARED STATEMENT OF SEBASTIAN ANEFAL, SECRETARY, DEPARTMENT OF
ECONOMIC AFFAIRS, FEDERATED STATES OF MICRONESIA

Mr. Chairman: I have the honor to appear before you today on behalf of the Federated States of Micronesia (FSM), and wish to thank you and the Members of your Committee for holding this important and timely hearing on a matter of utmost importance to my nation.

Mr. Chairman, the FSM has now concluded negotiations with the Administration on a package of Compact amendments. We joined the U.S. in signing these agreements in May of this year, and look forward to working with Members and staff to address concerns we have regarding the proposed legislation now before you so that Congress may pass this important legislation on a timely basis.

We stand at an important juncture in the special relationship between our nations. The Compact as it is to be amended, intends to further our mutual commitment to preserve the peace and stability of the central Pacific, and to promote the continued development of the FSM on a sustainable basis. Mr. Chairman, these documents will profoundly affect the fate of the Micronesian people and the security and stability of the region for the next twenty years and beyond.

The sectoral approach to grant assistance in the new agreement is a marked change from past practice. As such it will require implementation adjustments by both sides. Nonetheless, it provides the best mechanism for reaching our mutual goals and will direct assistance to where it is needed most.

Similarly, we welcome and are committed to implementing new accountability and oversight requirements. It is no secret that there have been mistakes on both sides under the original Compact. While we were not always in agreement with the tone and findings of the GAO's reports during the past several years, we are thankful to the Congress for undertaking this important initiative and shedding light on deficiencies. Their work assisted both the U.S. and FSM negotiators in addressing these issues in the amendment documents.

At the outset of the talks, the FSM proposed the notion of a joint committee to oversee implementation of the Compact. This proposal was welcomed by the U.S., and ultimately took the form of the proposed Joint Economic Management Committee (JEMCO). The JEMCO will consist of representatives from the U.S. and FSM, with a U.S. majority, and will meet regularly to identify any problems in Compact implementation and develop prompt and cooperative responses. This approach certainly adds to the measures available to make proportional and selective interventions to ensure effective implementation of the amended Compact; however, and most importantly, the JEMCO provides a mechanism for constructive, consultative and consistent dialogue that was missing in the past.

We appreciate the generous nature of the U.S. proposal. However, there remain certain provisions of the Administration's proposal that cause the FSM serious concern. Unless addressed by the U.S. Congress during the approval process, these problems hold the potential to unravel the carefully-woven fabric of the Compact package. And that package, Mr. Chairman, was designed in close consultation with

professional economists and adopted by the FSM leadership to achieve our mutual goal of ultimate self-reliance.

First and foremost, our concerns center on the level of economic assistance over the next twenty years. Beginning in 1997, the FSM began work on constructing a comprehensive economic analysis of its needs over the next twenty years. This analysis was at the core of our original economic proposal made in 1999, which called for economic assistance at the level of \$84 million annually over the next twenty years. Six months later, the U.S. responded with an initial offer of \$61 million annually that fell far short of our annual needs and disastrously short of creating a Trust Fund sufficient to secure stability at the end of the period. After further analysis of ongoing macroeconomic trends, the FSM was able to lower its minimum required figure by \$5 million annually. Still, the U.S. proposal as reflected in the legislation before you falls \$7 million annually short of that level.

The FSM demonstrated that such a marked reduction in current levels of assistance would threaten the viability of the nation from the outset. The rationale for the economic package was to provide economic stability throughout the twenty year period, while allowing for a gradual reduction in the level of the FSM's reliance on annual assistance as the economy grows. On numerous occasions we presented our economic reasoning to the U.S. negotiator, and at no time were they met with countering arguments. Neither has there ever been any dispute with the analysis or the anticipated outcomes based on economic modeling. Instead, we were told that the U.S. assistance proposal was simply the maximum that the U.S. could offer—in essence, the result of a political decision rather than being based on sound and responsible economic analysis.

Fortunately, and through the hard work of negotiators on both sides, we were able to bridge the gap to the point where we could agree on submitting the document for Congressional consideration. However the sum of the annual grant and Trust Fund contributions still falls \$7 million short on an annual basis of what we identified as the absolute minimum required for the FSM economy to achieve our mutual goals. Those being, among others, to gradually improve economic vitality and living standards during the next twenty years and to have a sufficiently funded Trust Fund to achieve self-reliance.

In addition to the effects of the initial proposed reduction in grant funding in 2004, the FSM is facing significant pressures placed on the economy by the need to raise the necessary \$30 million trust fund contribution and by the reduction in government capacity due to new restrictions on the funds. Quite frankly, the potential for economic instability exists. The \$7 million in additional annual funding requested by the FSM may not seem like much in the overall scheme of the Compact or relative to the U.S. budget, but it is critical to the health of the FSM's economy, the well-being of our people, and to the future of our nation.

The adequacy of the Trust Fund is also a profoundly important aspect of our long-term development strategy as it gives our people and potential investors a sense of hope and confidence in a sustainable future. In considering the legislative package as submitted, the U.S. Congress should take note of the stated Compact goals and determine whether the funding levels and mechanisms can produce the desired result, making such adjustments as it may deem necessary.

There are several other aspects of the Compact proposals that are troublesome from our point of view. First, there is the inadequacy of the inflation adjustment. This involves two separate issues—the formula to calculate the annual adjustment and the base year for adjustment. The FSM seeks the assistance of the Congress in restoring full inflation adjustment and adjusting the base year to 2001, the last year of original Compact funding.

Another area of great concern to the FSM is the loss of FEMA disaster relief assistance. Without reinstatement of this important benefit by the U.S. Congress, the substantial investment made by the U.S., and pledged for the next twenty years, is placed in jeopardy. As the proposed amendments now stand, storms or other natural disasters—a statistical certainty—hold the potential to irreparably damage the social and economic infrastructure upon which our nation's growth prospects rely.

Similar to the FEMA issue, we are very concerned by threats to the continuation of important and successful federal programs under the Compact as amended. Throughout the negotiations, the Administration has stated that it was not their desire to preempt the Congress on these important issues. At the same time, Congress has at times (such as in the "No Child Left Behind Act") called upon the negotiators to decide the matter. In many areas this has resulted in essential federal programs extended to the FSM possibly falling through the cracks and no longer being made available to support our development efforts. Again, loss of complementary programs presents a further threat to near-term stability and reduces the chances to achieve even our modest economic growth projections.

The U.S. negotiator has since clarified the Administration's position on the matter, stating that calculations of the U.S. assistance offer were made based upon the assumption that federal programs would continue at their current levels. We hope that Congress, in its wisdom, will take note of this important statement and act to ensure the continuation of invaluable programs to the FSM, such as those under NCLBA, IDEA, Head Start, Pell Grants, and others.

Mr. Chairman, during our lengthy negotiations we sought to address non-financial methods in which the U.S. could enhance the FSM's growth prospects for the future. We seek to maintain and modernize tax and trade provisions that will enhance the economic linkages between our two nations. Specifically we wish to work with Members to redress the elimination of reference to certain tax provisions in the legislation before you by ensuring that the original intent of those tax provisions will be maintained. In order to support private sector development and to foster private investment, we would like the U.S. Congress to consider enhancing the trade provisions available to the FSM. The scope for trade preferences has narrowed and the prevailing conditions have changed since the Compact was first drafted; however, we believe both our special relationship of Free Association and the clear intent of the proposed twenty year package provide sufficient justification for the FSM to gain access to modernized trade privileges.

The proposal before you includes changes to the non-expiring immigration provisions of the Compact. These changes have been made at the insistence of the Administration. While the FSM agreed to discuss, and did discuss, in good faith and on a bilateral basis, specific issues of concern as to our citizen's entry and residence in the United States, we would not have amended the Compact to accomplish the result of our discussions. The FSM fully understands the U.S. concerns over security, and we support the U.S. in all its positions against terrorism and transnational crime. But the FSM and our citizens are not a threat to the United States. We have never sold passports to foreign nationals. We have not naturalized a foreign national in many years, and the requirements are almost impossible to meet. We do not facilitate the adoption of our children to "baby brokers." We do agree with the U.S. that passports should be required of our citizens, and we are willing to accommodate the expressed interest in the FSM's use of the latest technology to reduce the risk of passport fraud. The FSM wants to do its part to assist the U.S. in its important task of securing the peace and in securing its borders.

Mr. Chairman, allow me to turn to elements of the legislation that are not part of the proposed Compact amendments. We wish the Committee to be aware that the FSM was not consulted in the drafting of these Compact Act proposals by the Administration. We were assured that any changes from the existing language in PL 99-239, would be solely to update existing language. When we finally had the opportunity to review the proposal transmitted by the Administration, we found that the changes went far beyond a simple "updating." We identified at least three major problems for which we seek adjustments by the Congress.

First, there is the issue of transition to a machine-readable passport scheme. This is a concept to which the FSM has repeatedly pledged its support. However, we find it quite alarming that the Administration has seen fit, unilaterally, without prior notice, to set aside \$250,000 or more from the Compact's capacity-building assistance for this purpose. It is alarming for many reasons—the fact that budgets are in the process of being developed on the negotiated package, the fact that the sector is currently under-funded even before these changes, and for the precedent it sets for future Administration action without consultation.

Second, and similar to the first, is that the Administration insists on mandating the FSM's development of a more effective immigrant screening system. We are given just one year to do this. Again, the FSM has repeatedly agreed to undertake steps to implement such systems. However, and by all reasonable estimates, it is an extremely complex and expensive undertaking. With multiple court systems, four states, and a decentralized judicial system, it is unlikely this effort could be concluded in just one year. Under the Administration's unilateral proposal, FSM failure to meet this arbitrary deadline would result in withholding of Compact assistance. Such a punitive provision is unnecessary and unjustified considering our mutual interest in pursuing this objective.

Third, there is the matter of changes to the language concerning provision of compensatory federal programs. In 1986, Congress initiated and passed this language in order to mandate these programs, and funding, to the FSM as partial compensation for loss of tax and trade benefits agreed to by the Administration but eliminated by Congress prior to passage. Unexpectedly, the Administration now has proposed to alter the language of the compensatory provisions to make them optional for the U.S. agencies. The FSM requests that the Congress restore the original language consistent with the original Congressional intent.

Mr. Chairman, I have highlighted a number of problems and uncertainties posed by the Compact amendments and the Compact Act proposals. We would like to propose the Congress include in its legislation a provision for a three-year comprehensive Congressional review of the health of the FSM economy, to examine whether, in light of experience, a need then exists for further adjustments beyond those that now may be made.

In conclusion, Mr. Chairman, the U.S. and the FSM, acting together, have drawn upon the lessons of the original Compact in an attempt to develop a document that will further the mutual interests of both nations. With the help of the U.S. Congress in addressing our concerns about the legislation before you, we can arrive at an agreement that ensures the continued viability of a nation and the well-being of its people, and that maintains the peace and security of this critical region of the world.

Both the U.S. and the FSM can be rightly proud of the unique bonds we have forged in the Compact period. We hope to be equally proud of the course that will be set for the next 20 years and beyond. We urge Congress to act favorably on the Compact legislation, and to make the adjustments necessary to ensure a solid foundation for the future.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Zackios, please proceed.

STATEMENT OF GERALD M. ZACKIOS, MINISTER OF FOREIGN AFFAIRS, GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

Mr. ZACKIOS. Thank you, Mr. Chairman. Before I proceed with my submission this afternoon, may I respectfully request of this honorable committee that the record remain open for submission of a statement by the four atolls affected by the nuclear testing programs?

The CHAIRMAN. That will be done.

Mr. ZACKIOS. Thank you, Mr. Chairman.

Mr. Chairman, on behalf of the people and the government of the Republic of the Marshall Islands, RMI, I want to express my gratitude to you and this committee for its oversight and the review of the proposed legislation to sustain the success of free association between our governments.

The RMI government respectfully requests that Congress approve the negotiated agreements. While we fully support our agreements, several outstanding issues remain. Before summarizing these issues, Mr. Chairman, I ask that the committee first hear our basis for how we see the compact and funding obligations.

As a first principle, the compact is not a grant handout or a foreign aid program; it is an alliance closer than NATO's, in which RMI continues to support U.S. leadership in the preservation of international peace and security. It is a two-way relationship, a real partnership.

We are not just asking for more; we are asking Congress to fine-tune the amended compact so it does endure for the benefit of both areas. The RMI has not and in the future is obligated not to erode its unique security and defense commitments that include: the defense veto, third-country denial, continuing use of key defense sites, and the eligibility of Marshallese to join and be drafted into the U.S. Armed Forces.

On the other side of the equation, we hope that the United States does not allow its commitments to the RMI on economic assistance, immigration, and Federal programs to erode.

The unresolved issues include: first, a full inflation adjustment for compact funds so that the grant assistance and compensation provided by the compact does not lose real value and fully supports the compact's mutual commitments. We do not know why a partial adjustment is mandated, unless the United States has the intention of deflating the grant assistance and compensation, and thus, our budget and economy.

For Kwajalein landowner compensation under the Military Use and Operating Rights Agreement, MUORA, with only a partial inflation adjustment, the landowners are giving the U.S. Government a rebate, and that will only multiply the longer the MUORA is in effect.

Finally, we learned there is serious discussion of having a 5-year period to review if full inflation or other grant assistance is necessary. While we appreciate the concerns regarding the adequacy of the Title II package negotiated, my government believes we should fix the package now instead of waiting for 5 years.

The effect and impact of a flawed inflation adjustment on compact economic assistance can be predicted with certainty now. We still strongly believe that full inflation adjustment should be provided, since this change would help us achieve fiscal stability in the long term and provide the real funding we have negotiated.

Second, we seek the continuation of Federal education programs and services that are an integral part of the RMI's education system. If these programs and services were removed, it would severely impact education in the RMI, as well as limit education opportunities for Marshallese youth. As it stands now, we are losing eligibility under the No Child Left Behind Act as well as other programs, including Pell grants in 2004.

Mr. Chairman, both our governments have made education a deep priority sector for compact grant assistance. However, if Federal programs and services are eliminated, the added investments we plan to make will not have an impact. More specifically, if the Pell grant program is not continued, the College of the Marshall Islands would be in a critical position, and post-secondary education would be unattainable for almost all Marshallese.

Third, we ask for congressional support to assist the repaving of the Majura International Airport so U.S. commercial air service and military access is maintained for the sole international air link for the RMI, and a crucial link for the Micronesian region.

Fourth, we urgently seek continuing eligibility for FEMA disaster and rehabilitation assistance, especially since most of our infrastructure has and will continue to be built using compact funds, and since our low-lying atoll environment is highly susceptible to natural disasters. This assistance has been seldom used, but it has been proven critical in times of need.

Fifth, in order to fully realize the long-term objective and goals of the RMI government, as well as the Kwajalein landowners, it is imperative that the early termination provisions of the MUORA be modified to ensure that the United States does not vacate Kwajalein earlier than 2030.

Such an extension, which is only 7 years past the current earliest termination date, would help the landowners build up their own

trust fund, and it would provide incentives to make viable the RMI and U.S. investments for the medium and long term.

Sixth, the RMI government petitioned the Congress under the compact "changed circumstances" provisions in September 2000 and updated it in November 2001. Congress has yet not responded to the RMI's petition for additional compensation contemplated by the settlement agreement. To move forward, we ask that this committee schedule a hearing focused on the nuclear claims issues as soon as possible.

Also, Congress requested that the administration review the RMI's petition over 1 year ago, and we understand that there still is no definite date for its completion and release. Meanwhile, Marshallese who were directly exposed to nuclear tests continue to die from cancers and leukemia without ever receiving full compensation for their injuries.

Moreover, entire communities continue to live in exile from their homelands to this day. Confronting and resolving these issues should not be put off any longer. We believe solutions are possible.

The final issue, Mr. Chairman, concerns the Compact Act. We were not provided the opportunity to address our concerns resulting from the administration's unilateral changes. While our main issues are in our submitted testimony, we were taken aback by the changes that were made without consultation and not in the spirit of the compact agreement which was painstakingly negotiated. I hope we can resolve several of the key issues changed in the act.

Thank you, Mr. Chairman. I look forward to working with you and your staff so our common interests are achieved and we can conclude the amended compact in both our legislatures. Thank you.

[The prepared statement of Mr. Zackios follows:]

PREPARED STATEMENT OF GERALD M. ZACKIOS, MINISTER OF FOREIGN AFFAIRS,
GOVERNMENT OF THE REPUBLIC OF THE MARSHALL ISLANDS

On behalf of the people and the Government of the Republic of the Marshall Islands (RMI), I want to express our gratitude to this Committee for its oversight and review on behalf of the United States Senate of agreements and proposed legislation to sustain the success of free association between our governments. The agreements that have been signed by our governments to renew expiring provisions of the Compact, and to adapt some of its provisions to our evolving alliance amid new realities, were negotiated in a spirit of friendship and respect. Consistent with the special and unique history and features of our bilateral alliance, both the RMI and U.S. negotiators have consulted regularly with the Members and staff of this and other Committees of the U.S. Congress regarding the progress of our negotiation process.

This special and unique history between our two countries extends from World War II when Marshallese scouts assisted U.S. soldiers as they advanced across the Pacific through to the testing of 67 atomic and thermonuclear warheads from 1946-1958, to the continuous provision of land and sea at Kwajalein Atoll since the 1960s and the continued cutting edge advancements made there for U.S. missile defense. Today, Marshallese citizens are serving in the U.S. Armed Forces, with many having participated in Operation Iraqi Freedom. We are proud that our citizens are serving not only because it is a Compact provision but also because we share the same ideals as the United States: the pursuit of life, liberty and happiness and our real experience in democratic governance and freedom.

The RMI Government fully supports and respectfully requests that Congress approve the negotiated agreements. My government is also seeking early approval of the agreements by the Nitijela, our national parliament. President Note and his Cabinet believe the agreements will provide the continuity and stability that is imperative in our bilateral relationship with the United States, thereby also enabling the RMI to continue, domestically and internationally, to support the political, social and economic development of our people.

As we can now see how free association has evolved over the last 17 years of the Compact, we have come to realize that the bilateral relationship that was constructed during the late 1970s and to the mid-1980s has more than survived the test of time. The agreement and relationship has evolved to changing circumstances—circumstances within the global and regional context; circumstances and priorities within the United States; and circumstances and challenges within the RMI. Some will concentrate on the weaknesses of the past years, however, the strengths and accomplishments of our relationship, and the Compact that embodies this relationship, far outweigh the weaknesses. If not, we would not be here today discussing the acceptance of amendments to the Compact.

Mr. Chairman, as you and the Committee members know, we have negotiated an agreement that adjusts the Compact to today's world and today's needs and tries to set a realistic framework for the future. The main components of this agreement are the renewal of the Compact's economic provisions that contain several new or revised elements. Most notable is the introduction of a trust fund and a more practical and transparent accountability framework; a renewal of our mutual security and defense relations which set forth obligations that remain unprecedented in U.S. bilateral relations with any other country; revised immigration policies and procedures that address U.S. security and other concerns but maintain the right for Marshallese to live, work and learn in the United States; and, while not expiring, an amended Military Use and Operating Rights Agreement that continues the use of Kwajalein Atoll for the U.S. Army beyond 2016 with the potential to remain until 2086.

Mr. Chairman, we have painstakingly negotiated these elements with the U.S. Administration over the last 2 years. We thank U.S. Compact Negotiator Al Short and the Administration for their constant pursuit of an agreement and we thank them for their patience in working with us to address our concerns, our hopes, and our belief in the future of our relationship.

While we stand by what was negotiated, there remain several outstanding issues that the Administration could not respond to or changes that were made without consultation. My government hopes and expects that all pending issues between our nations can and will be addressed in the same spirit of trust, justice, and partnership that produced the amendments to the Compact agreements. We believe outstanding issues can be resolved positively in a way that preserves and further improves our relationship.

We do not see the Compact as a grant hand-out or a foreign aid program as the underpinning of our relationship. To the contrary, we strongly believe that we have provided and continue to provide the United States with our very limited land, our vast air space and sea area, and even our people—past, present, and future—through the historical and present security and defense relationship, including the sacrifices we have and continue to endure because of these commitments. In our view, it is a two-way relationship, a real partnership. Thus, when the Congress addresses our remaining issues, we hope that you view them in this context.

We are not asking for "more" just to supplement what we negotiated with the Administration. We are asking Congress to fine tune the Compact, as amended, so that it does endure for the benefit of both parties. The RMI has not and in the future is obligated not to erode its unique security and defense commitments that include: the defense veto; third-country denial; use of air, land and sea space; and the eligibility of Marshallese to join the U.S. Armed Forces. On the other side of the equation, we hope that the U.S. commitments to the RMI on the economic, immigration and certain eligibility for Federal programs do not erode.

The unresolved pending issues include: 1) a full inflation adjustment for Compact funds so that the grant assistance and compensation provided by the Compact does not lose real value and fully compensates the RMI and its citizens for its continued support and commitments of the Compact's provisions; 2) the continuation of Federal education programs and services that are an integral part of the RMI's education system and, if removed, would severely injure the delivery of education in the RMI as well as limit education opportunities for Marshallese youth; 3) Congressional support to assist the repaving of the Majuro international airport so U.S. commercial air service and military access is maintained for the sole international air link for the RMI and a crucial link for the Micronesian region; 4) continued eligibility for FEMA disaster and rehabilitation assistance especially since most of our infrastructure has been and will continue to be built using Compact funding and since our low-lying atoll environment is highly susceptible to natural disasters; 5) Congressional support for a Kwajalein landowner trust fund; and 6) Congressional consideration of nuclear claims issues arising from the U.S. nuclear weapons testing program.

In reference to these issues, I am submitting with this statement several issue papers that summarize where continued agreement is required. If I may, Mr. Chairman, the following is a summary of our views on the crucial elements of these issues.

FULL INFLATION ADJUSTMENT

Most of the current Compact agreement's economic assistance has a partial inflation adjustment (2/3 of the Gross National Product Implicit Price Deflator). Since the grant assistance was only partially inflation adjusted and there were substantial step-downs (by \$4 million in 1992 and \$3 million in 1997), our economy suffered severe economic shocks during these step-downs. The economic growth and budget cuts that were expected materialized to some degree but not at the expected levels.

For the Compact, as amended, we have agreed with the Administration to have the annual grant assistance decremented by \$500,000 annually with the decremented amount being added annually to the trust fund's annual contribution. While this decremented amount is a large percentage of our annual grant, and grows as a proportion of the grant annually, we agreed to such a large decrement because without it, our trust fund would not be viable for the post 2023 era. In addition, we are committed to contribute \$30 million between now and FY05—this amounts to about 30 percent of our current annual budget. We consciously made a medium term sacrifice to save for future generations.

While we fully believe in the decremented approach and the reduction of our grant assistance because of this conscious sacrifice, we cannot understand why the grant assistance must lose value to inflation. Since most of our goods for our import-reliant economy are from the United States, and the U.S. dollar is the official currency of the RMI, we not only import U.S. inflation but also the added inflation-affected costs of shipping and handling.

The only answer we can come up with for the U.S. inflation policy is that the United States wishes to deflate our economy by having the funding lose its real value. The U.S. Government has not provided a reason—past or present—of why only a partial inflation adjustment is applied. We have suffered in the past for this error and we hope not to suffer again. It is, to us, ironic that the Administration has agreed to allow the distributions from the Compact trust fund (post 2023 when annual grant assistance is to end) to equal the annual grant assistance plus full inflation.

There are many statements within the U.S. government and my government about achieving "economic advancement and budgetary self-reliance" via the Compact grant assistance. Rather than deal with a generic objective, we have concentrated on budgetary self-reliance as meaning long term fiscal stability as our goal for the Compact's economic assistance and post grant assistance era. Why? During the current Compact we have put in place the components of democratic governance and a free society. Even given our belt tightening and some economic growth, we realize that to have properly funded government functions and the related trained human resources, our fiscal situation requires an input from an outside source. We see the main source as being the Compact's grant assistance until 2023 and the trust fund distribution thereafter.

The problem is that with the annual decrement and the loss of the grant funding to inflation, we can fill this growing funding gap in the short term but we cannot do it continuously. The gap just grows at too rapid a pace and we cannot fill it by such large increases in revenue generation or budget cuts. Thus, our request to apply the full inflation adjustment. With this minimal added amount to the grant funding and trust fund contributions we believe we can maintain fiscal stability as well as have a strengthened Compact trust fund that will insure that fiscal and economic stability will occur.

For the funding provided under the Military Use and Operating Rights Agreement (MUORA), the same argument applies with a twist: the Kwajalein landowners are providing their very limited land for use of the Ronald Reagan Missile Test Site at Kwajalein Atoll. Why should the payments under the MUORA only be partially inflation adjusted? With only a partial adjustment, the landowners are really giving the U.S. Government a rebate on their access to Kwajalein. This rebate will multiply as the new MUORA is extended to 2023 and can go as long as 2086. In effect, the longer the MUORA is extended, the more money landowners will lose in terms of the real value of the funding provided and the larger the bargain to the U.S. for access

As I have said above, the RMI commitments do not erode under the Compact and, thus, the U.S. commitments should not erode.

Finally, we learned that there is serious discussion of having a 5-year period to review if full inflation or other grant assistance is necessary. While we appreciate the concern regarding the adequacy of the Title Two package negotiated, my government believes we should fix the package now instead of waiting for 5-years. The effect and impact of a flawed inflation adjustment on Compact economic assistance can be predicted with certainty now. We still strongly believe that the full inflation adjustment should be provided since this change would help us achieve fiscal stability in the long term and provide the real funding we have negotiated. In addition, we have had experience with review periods (annual JEC) and showing impacts (Section 111b tax and trade compensation) for in the current Compact. These provisions have proven hard for us to make any changes in the current agreement though they were mandated by Congress. We don't want a review period that we will have to stir up a constituency for 5 years from now.

THE IMPORTANCE OF FEDERAL EDUCATION PROGRAMS AND SERVICES

Federal education programs and services have proven to be critical in educating young Marshallese and opening doors to those who go on to post-secondary education. Our country has significantly benefited from these programs and services and, I believe, the United States has benefited also. Just as an example, most of our Compact and Embassy team, as well as most of the people in my Ministry, have benefited in an extraordinary way from a U.S. Federal education program, with the most critical being the Pell Grant program. If these doors are shut, our mutual objectives for economic advancement and budget self-reliance will be severely impacted.

The importance of these programs is not only in terms of financing, but even more critically in terms of technical expertise, methods and approaches as well as access to educational institutions.

The RMI Government has made a firm and conscious decision to apply the largest portion of Compact grant assistance to the education sector. For Fiscal Years 2004-2006 about \$10 million will be aimed at the education sector annually, in addition to domestic resources and in addition to targeted infrastructure spending on education facilities. The Federal programs are identified to provide critical programs and services for which the RMI does not have the funding or capabilities, on its own, to provide. Thus, if the RMI loses its eligibility for the education program funding, the Compact funding will merely replace funding and programs once provided by the Federal education programs. These programs are in crucial areas, such as Elementary and Secondary Education, Head Start, Special Education, Bilingual Education, and Vocational Education. The elimination of the Pell Grant program would have more catastrophic impacts such as critically destabilizing the College of the Marshall Islands (a U.S. land grant institution) as well as closing higher education opportunities in the United States.

Mr. Chairman, we have sought support from the U.S. Compact Negotiator on this issue. He has kindly informed us, through a letter to the Senate Energy Committee of the Administration's position: the Compact's Title Two grant assistance was not negotiated on the basis of replacing funding for U.S. Federal programs and services.

I kindly request that we work with your committee and other related committees to continue RMI eligibility for these crucial education programs and services. If we do not have the U.S. Government's support on this issue, I believe that the Compact's emphasis placed on education by the Administration during negotiations will be lost during the new term of the Compact, as amended. We simply cannot replace what would be lost from these programs and services.

FEDERAL EMERGENCY MANAGEMENT ASSISTANCE (FEMA) ELIGIBILITY

The current Compact provides for RMI eligibility for FEMA's disaster rehabilitation and hazard mitigation assistance as well as a disaster preparedness annual grant. Under the Compact, as amended, FEMA will provide the disaster preparedness annual grant but the U.S. Agency for International Development's Office of Foreign Disaster Assistance will provide the disaster relief assistance. No hazard mitigation or rehabilitation services will be available. The U.S. will provide \$200,000 annually for a disaster relief fund under the Compact, which will assist our capacity to deal with small-scale disasters, but will certainly not help in the case of a catastrophic disaster.

FEMA program eligibility is critical for the RMI given the vulnerability of the RMI to high impact natural disasters, such as typhoons, tropical storms, wave action and drought. The RMI's natural environment is characterized by low lying atolls scattered throughout the Western Pacific ocean with an average of 6 feet above sea level, a total land area of 71 square miles, limited fresh water supplies,

and remoteness from major metropolitan centers with the closest being Hawaii at 2,500 miles away.

FEMA has provided significant disaster rehabilitation and hazard mitigation assistance during the Compact's current term. Without FEMA, the RMI would be in a precarious position financially and more susceptible to natural disasters. The OFDA program is provided to all foreign countries but does not have FEMA's disaster relief and hazard mitigation programs.

Finally, we note that most of the RMI's essential infrastructure has been built with the use of U.S. grant assistance and this will continue to be the case under the new Title Two Compact provisions for public infrastructure. Given the large U.S. investment in the public infrastructure of the RMI, it follows that measures should be taken to protect these investments.

Mr. Chairman, we ask that the RMI continue to be eligible for FEMA's disaster rehabilitation and hazard mitigation assistance. There is no question that these programs have proven most critical for our country.

MAJURO INTERNATIONAL AIRPORT REPAVING

The RMI has an urgent infrastructure need to repave the Majuro international airport. The U.S. Federal Aviation Administration identified this urgent need in early 2002. Since that time, the RMI has performed an engineering feasibility study and attempted to find project funding sources. The cost is estimated at \$10-12 million.

My government did look at using Compact "bump-up" funds in FY2002 and FY2003 to fund the project. However, given our commitment for the Compact trust fund's start-up amount of \$30 million, we had to set aside most Compact FY2002 and FY2003 infrastructure and "bump-up" funding for this Trust Fund contribution. Finding an extra \$10-12 million in a total budget of about \$100 million was not possible.

We have run out of financing options and the airport is now in danger of being shut down. Two U.S. carriers service the airport: Continental and Aloha airlines. It is also the home for Air Marshall Islands- the only airline that provides intra-RMI services. If Continental and Aloha must stop services, the RMI will be physically cut off from Hawaii and Guam and will disrupt service throughout Micronesia as well as prevent commercial flights to the Ronald Reagan Missile Test Site at Kwajalein Atoll. In addition to commercial flights, U.S. military flights land, transit and refuel in Majuro for flights to/from Kwajalein as well as for trans-Pacific flights.

Mr. Chairman, we would like to work with you and the Committee to address this immediate need. If we are not successful in finding a funding source, we will have to dip into our trust fund set-aside and, thus, we will not meet our obligation under the Compact. We do want to meet this obligation since without the RMI initial contribution, the Compact trust fund will be inadequate.

EXTENSION OF THE MILITARY USE AND OPERATING RIGHTS AGREEMENT FOR KWJALEIN ATOLL

The RMI Government and the Kwajalein landowners will be negotiating an amended Land Use Agreement to reflect the negotiated terms and conditions of the extended MUORA, which allows the U.S. access to Kwajalein to at least 2023 with the potential to remain until 2086. The U.S. can terminate use at any time after 2023 as long as it provides a 7-year notice. The Kwajalein landowner trust fund was a proposal by the landowners to help insure an income stream once the U.S. does terminate use, especially if termination occurs between the years 2023-2030.

The trust fund initiative for the Kwajalein landowners is consistent with the MUORA and is well supported by precedent and other aspects of the RMI-U.S. relationship. Trust funds for the atolls of Rongelap, Bikini, Enewatak, Utrik and the Nuclear Claims Trust Fund, under Section 177 of the Compact, have been established by the United States to provide for the long-term economic and social benefit of RMI citizens impacted by U.S. nuclear testing.

The requested funding for the initial capitalization of the Kwajalein landowner trust fund is \$20 million. The landowners have committed to additional self-financing of the trust fund on an annual basis if this one-time appropriation is provided. If early U.S. termination were to occur, projections indicate that with a \$20 million initial capitalization, plus the landowners' contributions in addition to early termination payments by the U.S. as agreed to in the negotiated MUORA, the Kwajalein landowner trust fund corpus would reach above \$150 million in 2023, the earliest the U.S. can vacate Kwajalein. With such a corpus, the landowners will be able to replace the annual rent payments for about 10 years, which would allow a reason-

able timeframe for the landowners to transition into an alternative use and/or resettlement of their lands on Kwajalein.

If, however, such a request cannot be met by the U. S. Government at this time, the RMI Government requests that Congress, at the very least, allow for the extension of the MUORA early termination clause to 2030, thereby giving assurance that the U.S. will use Kwajalein for a sufficient length of time to achieve the long-term objectives of the RMI and the Kwajalein landowners.

Such an early termination clause will not only help Kwajalein landowners but also RMI and U.S. Army long-term initiatives. For instance, the RMI and the U.S. Army, with the Federated States of Micronesia (FSM), are currently preparing a project to extend a fiber optic cable from Guam to Pohnpei, Majuro and Kwajalein (to the Ronald Reagan Missile Test Site). The benefits for the U.S. Army's operations are obvious as well as the commercial opportunities for the RMI and FSM. Such a project will surely enhance and illustrate the cooperation between the U.S., RMI and FSM. The extension of the U.S. Army's definite presence until 2030 will make this project more commercially viable.

NUCLEAR CLAIMS ISSUES ARISING FROM THE U.S. NUCLEAR WEAPONS TESTING PROGRAM

One major issue of commitment in the Compact that was not addressed during our negotiations regarding amendments to the Compact is the U.S. nuclear testing legacy and those categories of claims that remain unresolved under the terms of Section 177 of the Compact, as amended, and the Section 177 Agreement. Although Section 177 of the Compact as amended and the Section 177 Agreement remain in full force and effect, we were informed early in our negotiations that the U.S. Compact negotiator lacked authority to deal with unresolved issues related to the effects of the U.S. nuclear testing program in the Northern Marshall Islands.

The reason given to us for this lack of authority was that the nuclear issues were under the jurisdiction of Congress by virtue of the "Changed Circumstances" provisions of Article IX of the Section 177 Agreement. The RMI Government filed a petition under this provision with the U.S. Congress in September 2000, and updated it in November, 2001. The problem that has arisen, as the attached issue paper regarding the nuclear test legacy explains, is that the U.S. Congress has not responded to the RMI's petition for additional compensation to be provided through the political process contemplated by the settlement agreement.

Unfortunately, the issues involved are many and complex. They include government taking of private property without just compensation; important new information regarding the effects of radiation on human health; and the clean up and restoration of radiologically contaminated lands.

The RMI understands that responding to the RMI's petition for additional compensation in the political process may be difficult, which is why the RMI is proposing that the awards of the RMI Nuclear Claims Tribunal (NCT) be returned to the legal process on the basis of a limited grant of jurisdiction to review, and reject or certify the awards of the NCT, based on U.S. standards of adequate compensation.

In order to move forward, we would ask that this Committee schedule a hearing focusing on the nuclear claims issues as soon as possible. Congress had requested that the Administration review the RMI's petition over one year ago and we understand that there still is no definite date for its completion and release. Meanwhile, Marshallese who were directly exposed to the nuclear tests continue to die from serious cancers and leukemias without ever receiving full compensation for their injuries. Moreover, entire communities continue to live in exile from their homelands to this day. Confronting and resolving these issues should not be put off any longer.

OTHER ISSUES

The Administration provided my government with a copy of the amended Compact Act on June 20, just before the amended Compact was sent to Congress. We were not provided the opportunity to address any of our concerns resulting from the Administration's unilateral changes.

In some instances, such as Section 104(b), these changes unilaterally amend the economic assistance and immigration provisions that we just concluded with the Administration. These issues have been difficult and contentious at times during our negotiations and to see the Administration making substantive changes to the Compact in this manner is wrong.

Moreover, in other instances, these changes affect the substance and intent of provisions inserted by Congress, in its wisdom, during the first Compact approval process. Below are several items we wish Congress to address by re-inserting its original Compact language.

Section 103(e)(3) makes reference to Articles X and XI of the Section 177 Agreement regarding claims, yet fails to point out actions taken by the RMI Government under Article IX of the same agreement to seek additional compensation, based on the U.S. commitment to provide adequate compensation under the terms of the claims settlement implemented pursuant to Section 177 of the Compact, as amended. Given that U.S. negotiators claimed a lack of authority to address unresolved nuclear-related concerns in Compact negotiations, the RMI Government believes it would be only fair to return to Congress's original language in this section. If the Administration wishes to advance a legal interpretation of Section 177 or provisions of the agreement implementing U.S. commitments to settle nuclear claims, the time and place to do that would be in a hearing and in legislation on the nuclear claims issue. The attempt to introduce this disputed legal interpretation into legislation approving agreements that do not address the nuclear claims issue, because the Administration refused to discuss the issues, is not a proper way to proceed.

Section 103(f)(2) should be clarified to provide that essential agricultural and food programs shall be continued to the affected atoll communities. While additional food supplement programs will be needed to support resettlement of contaminated islands once radiological clean up has progressed and safety standards have been satisfied, these nutritional programs are a moral obligation of the U.S. to ensure a minimum level of food assistance to both dislocated and resettling populations for the foreseeable future. We doubt that anyone familiar with the hardships and living conditions of the nuclear affected peoples would dispute the need for these programs to be extended as an on-going U.S. responsibility. This legislation presents the best opportunity that may arise before the current authorization for these programs expires for Congress to extend the USDA food program for at least another five years.

Under the current Compact and its Compact Act, Congress included Compensatory Adjustments (Section 108) that were provided for Congress's revision of the tax and trade provisions of Title Two, Economic Assistance. The Congress provided, under Section 108(a) that certain commercial U.S. programs "shall be made available." The Administration has now changed the RMI's eligibility for these programs to "are authorized to be made available." The programs include: the Small Business Administration, Economic Development Administration, Rural Utilities Service (formerly the Rural Electrification Administration); the programs and services of the Department of Labor under the Workforce Investment Act of 1998; the FDIC, and the programs and services of the Department of Commerce relating to tourism and to marine resources development.

The RMI sees this as a significant downgrade of eligibility and application of these programs. Your Committee should note that the trade provisions of the amended Compact are the same, restricting RMI exports in certain products. Congress should restore its original language in the new Section 108(a) (formerly Section 111(a)) to include all of the programs listed in Section 111(a) or their successors and to require that these programs "shall be made available" as provided by Congress in the original Compact Act.

This comment also relates to the amended Compact's Section 108(b). In the current Compact Act, the Congress allowed up to \$20 million to be authorized for compensation for any adverse impact of the Compact's tax and trade provisions. The RMI did apply for this compensation but the request did not pass the Administration's review. As you can imagine by reading the section, it is extremely difficult to prove such a negative impact. The result is that no funds have been disbursed to the RMI or FSM under this Compact provision.

The amended Compact Act sets a time limit to submit such an impact report or request by September 30, 2004 and for impacts only suffered from 1987-2003. We do not think this just. If the trade provisions were improved, we would understand, but, they are not.

Mr. Chairman, we ask that your committee review this provision so that: 1) impact can be claimed for the new Compact term, if appropriate; 2) that the deadline for submission for any such claim be submitted by September 30, 2023, the end of the amended Compact's Title Two; and 3) transparent guidelines and an evaluation process and requirements are defined so that it is something practical, not a nebulous, subjective process.

CONCLUSION

Last, Mr. Chairman, I would like to comment on the accountability mechanisms negotiated for the amended Compact's term, and thereafter in regard to the Compact trust fund. We stand by and fully support the Fiscal Procedures and the Trust Fund Agreements. We firmly believe just as the U.S. government must be account-

able to its taxpayers for Compact funds, my government must be accountable to its citizens for spending Compact funds and our own resources.

In fact, Mr. Chairman, we initiated steps on our own last year during our budget process and have begun allocating Compact assistance in the key sectors. The priorities are clear in our Medium Term Budget and Investment Framework. These are education, infrastructure development and maintenance, health and environment. We are currently working closely with the U.S. Department of Interior in applying the Fiscal Procedures Agreement and we welcome their support and cooperation.

My only word of caution is that what we are developing is a new budget and fiscal management system that resounds throughout our public service. As in the United States, applying performance-based budgeting and other requirements at a federal, state or local level does not occur overnight. We are instituting a step-by-step process. I hope both sides have patience as well as perseverance. We need assistance and support to help us apply these new requirements, not people looking over our shoulder and pointing fingers. With the cooperation we have received so far, my government is encouraged, progress is being made, and we feel we are doing it right.

Mr. Chairman, I realize our issues, together, may sound overwhelming to you and other Committee members. I believe that, together, we can address these issues in a timely manner. As I have said early on in my statement, we have come a long way in our relationship. The issues identified are to move our relationship forward so we both step into the future together and that we have an enduring Compact that serves both our needs while giving us both the tools to meet our obligations.

Mr. Chairman, after departing Washington, I will return to Majuro where I look forward to presenting the Compact, as amended, to our legislature, the Nitijela. The sooner we can come to agreement on the above issues, the faster we can have the amended Compact passed through our legislative process.

I look forward to working with you and your staff so our common interests are achieved.

Kommol Tata.

The CHAIRMAN. Thank you very much.

Might I ask my colleague a question? Senator, I have a very urgent meeting. If I were to ask a few questions, would you mind terribly closing the meeting for me; continuing it, and subsequently closing it?

Senator AKAKA. I would be happy to.

The CHAIRMAN. First of all, I would ask on our side if staff would please research for me this whole issue of passports. I don't quite understand. I guess it is sort of like, if what you are doing is not broken, we don't have to fix it.

Is what we have now not working, and therefore we need passports? I would like to have a breakdown on that before we have a final wrap-up.

Is it your position, both of you, that you don't think we need that passport system that is provided in this legislation? We will start with you, Secretary ANEFAL. Do you want the passport system as provided?

Secretary ANEFAL. As I stated in my statement, Mr. Chairman, we support the United States in terms of providing assistance in whatever way possible to fall in line with the aftermath of 9/11. But there are changes that could be made without having to really deal with having new passports.

The CHAIRMAN. We would be interested in that. You could submit that to us.

Secretary ANEFAL. Thank you.

The CHAIRMAN. How about you, Mr. Zackios?

Mr. ZACKIOS. Thank you, Mr. Chairman. As you know, we have negotiated the amended immigration provisions. One of our main concerns was if these provisions were to dilute the right of FSM

citizens to enter, work, and live in the United States and seek education opportunities.

We have, however, moved into a machine-readable passport system. This system is soon to be operational in the Marshall Islands.

The CHAIRMAN. So you don't see any problem if we move in the direction mandated in this legislation?

Mr. ZACKIOS. I think we have negotiated an amendment that reflects both of our desires and concerns.

The CHAIRMAN. Okay. Thank you.

Could I ask, with reference to education, the school systems must be rather small. Who runs the schools, either of you?

Mr. ZACKIOS. Thank you, Mr. Chairman.

In the Marshall Islands, a majority of the schools are run by the government.

The CHAIRMAN. The government of the Marshall Islands?

Mr. ZACKIOS. Yes.

The CHAIRMAN. Do you have schools modeled after American schools, grade one or kindergarten through 12, and then post-high school, or what?

Mr. ZACKIOS. In most if not all our schools, they are based on the U.S. education curriculum, yes.

The CHAIRMAN. And you must be contending that schools are not going too well and you would like to improve them, is that correct?

Mr. ZACKIOS. That is correct, Mr. Chairman.

The CHAIRMAN. Does that mean they are not going well as compared with, say, ours in the United States? Ours aren't going too well, either. Or are they just inadequate? What is it that you are telling the committee?

Mr. ZACKIOS. Mr. Chairman, there is a two-fold issue. Of course, we need to improve our education system; but the challenges, obviously, are resources that are available to focus on a better education system. We feel that with better resources and with better human resource capacity, we will be able to upgrade the education system in the Marshall Islands.

The CHAIRMAN. Many of your citizens now leave and go to other places to work, that is pretty obvious. They leave and go to work some other places. Do very many of them return money to their families in the islands, to your knowledge? Do they send back money?

The Mexicans are fully aware that the people that work in the United States send home millions of dollars to Mexico, which help the Mexican communities, the Mexican government, and the families. What about yours? Do you have that relationship, or not?

Secretary ANEFAL. I would say for the FSM, yes. To a larger extent it is partly cultural, that you tend to contribute to your family.

The CHAIRMAN. I understand it would not be mandatory, but you think it is happening in your island?

Secretary ANEFAL. Yes, sir.

The CHAIRMAN. Would you say to a large extent? Is a lot of the resource that families have there coming from their members who are overseas working elsewhere, or a small amount? How would you categorize it?

Secretary ANEFAL. Not to a large extent; but it is taking place, I'm sure.

The CHAIRMAN. How about you? Do you have any observation on your end?

Mr. ZACKIOS. Mr. Chairman, although there is no mandatory requirement for repatriation, people do send not only cash but they send products back to the islands, as we do to the United States, as well.

The CHAIRMAN. So when they leave, it is not a total loss to the community? They do contribute, in some ways, resources to the communal life.

What do either of you think the future holds in terms of economic development? When I speak of economic development, I don't speak of more government. I understand if we put more money in, there is more government. If we give you more money and there is more government, presumably the Government will write more checks, and you would say there is economic development. But I'm not talking about that.

Looking at economic development as non-government development of resources, is there a future of any significance, or are we going to remain more or less like we are for the foreseeable future, in your opinion?

Mr. ZACKIOS. Mr. Chairman, as you know, we are a small island Nation with restricted resources, restricted natural resources. I think our main challenge is to educate our people. As you have rightly stated, educating our people does not necessarily mean we will have a very bright economic future in terms of our domestic policy; but it also gives us the opportunity to educate our people to become internationally competitive, where they may go out and seek opportunities.

The CHAIRMAN. So you don't see anything beyond that, that there would be any business opportunities for the island and the island people?

Mr. ZACKIOS. We do see some opportunity, but I don't think it will be that kind of opportunity.

The CHAIRMAN. But it won't be much, is that correct?

Mr. ZACKIOS. Yes, sir.

The CHAIRMAN. How about you, Secretary Anefal?

Secretary ANEFAL. That is basically the same story, Mr. Chairman. But, of course, education means development in all sectors, so education is a priority. But for the private sector to thrive, even though the Government has set three sectors in our case, agriculture, fisheries, tourism—we have over the years begun to see some growth in the tourism sector. Unfortunately, because of all these outside occurrences or happenings, that has impacted upon the tourism sector, as well.

The CHAIRMAN. The little tourism that you have, or that started, what was it? Motels? People coming there to visit? Hotels?

Secretary ANEFAL. Hotels.

The CHAIRMAN. Resorts?

Secretary ANEFAL. Yes.

The CHAIRMAN. Are the islands resort-positive? Do you have shorelines that people would enjoy?

Secretary ANEFAL. In some of the islands, yes, we have some beaches that would be good for tourism development. But together

with that, of course, would be the infrastructure, along with transportation.

The CHAIRMAN. I close with my last observation. I believe that the administration is mistaken in the idea of FEMA and FEMA's successor. It would seem to me that it is very shortsighted to take FEMA out. I think we have to have FEMA in, or we have to provide some kind of insurance.

There is a propensity for danger. Why would we put all our money to help build things, and then take away the only disaster relief agency that we have? So I would think that, Senator Akaka, perhaps bipartisan-wise we could consider putting that back. I don't know what the administration thinks about that. I take it that we intend to do that, and they will react to it in due course. If your response is a terribly serious howl, we might reconsider; but let's hope it wouldn't be that big a howl. It seems to me it would be rather rational.

I thank the two of you and others who were here for the testimony and helping us today.

Is the other big issue your inflation issue? Let's just say we will consider that. A two-thirds inflation, of course, is full inflation. Again, I am very, very familiar with that. That doesn't matter for the first 10 years. It is 10, 20, 25, and then it gets big. I understand it gets very big at the end.

Thank you very much.

Senator AKAKA [presiding]. Thank you very much, Mr. Chairman.

Foreign Minister Zackios and Secretary Anefal, it is always a pleasure to have you testify before the committee.

I want to say that I agree with the chairman and also with the FAS position on FEMA. I believe we have to examine very closely the issue of whether to include FEMA, the FEMA program eligibility for the FAS in the proposed revisions to the compact.

As you know, I also support efforts to continue eligibility for FAS citizens in Federal programs. That we need to consider also.

I just have a question or two for you, for both of you. We can all agree that accountability provisions are important steps for all three countries. Part of the problem with the first 17 years of the compact was that western ideas were placed on Pacific communities and cultures without consideration of the traditions and practices of FAS citizens.

I say that because, as I mentioned in my opening statement, I have been in that area before, during the war, and after the war. Therefore, I have seen the changes over the years. I also feel that this consideration is very important.

In negotiating these provisions, were cultural practices in terms of policy implementation considered? And this question is to both of you: If so, do you think these considerations were appropriate? Will it make a difference in the implementation of the negotiated provisions of the compact? So these questions go to both of you.

Foreign minister Zackios?

Mr. ZACKIOS. Thank you, Senator.

Mr. Chairman, I believe we have taken into account in our discussions the issues and the local circumstances. I think it is important—in doing this, we also looked back on the 17 years of experi-

ence. As I stated in my statement, this is a partnership; it is not one looking over the other. That is the premise where we tried to work on this. It will be on a consensus basis, it is our understanding.

We do believe that we have to be accountable to our citizens, as the United States has to be accountable to its taxpayers, and to make sure that in the next 20 years term of this economic assistance we do realize our investments in the sectors that we have identified for the long-term economic advancement of our islands and the fiscal stability of our people.

Senator AKAKA. Secretary ANEFAL.

Secretary ANEFAL. Thank you very much, Mr. Chairman.

Yes, I do believe that the structure that is being proposed under the amended compact is really a measurable improvement over the original compact. It is my firm belief, too, that all policy considerations were taken into account as far as the FSM negotiating team was concerned.

Internal to the FSM would be the—in regard to the cultural aspect of your question—the internal setup of FSM, where we have, like our sister Republic of the Marshall Islands, we have four distinct island governments. So that would be an internal factor for the FSM national government to work with.

But yes; to a large extent, I believe we have taken a lot of the cultural and policy considerations into account from the beginning, because this is—like what has been said—a partnership arrangement; and we foresee that it is going to be a continuing working relationship where both sides could come to the table and say, okay, maybe this is the plan that should be taken, and this is where the money should be put to reflect the priorities that we have.

Mr. ZACKIOS. Mr. Chairman, if I may add a little, this has been an area where we had quite elaborate discussions. Although this is where we are right now on a voting basis, it would have been more preferable as a partnership if this board had a consensus mechanism rather than a voting mechanism on the allocation of the membership.

Senator AKAKA. I was surprised to read in your testimony that there were some unilateral changes that were made to the legislative proposal after the negotiations were completed. Can both of you further elaborate on these changes?

Honorable Zackios.

Mr. ZACKIOS. Thank you, Mr. Chairman. I believe I have addressed some of these issues, as you have rightly pointed out, in my written testimony. These are in certain areas.

For example, I would say that in section 177 in particular, which is an area that the administration indicated that it has no authority to negotiate, changes have been made to this particular section of that agreement where we did not negotiate.

Aside from this, there are other sections where we did not negotiate, but after signing and concluding, changes were made. These include those sections that have been identified where it relates to commercial—our eligibility to use commercial enterprises. There have been language changes there, and these are, to us, substantive in nature.

In the current instance of section 108(a), the current language says that certain commercial U.S. programs shall be made available. Under the changes, the language has been changed to "are authorized to be made available." I think that is a substantial change to how we receive these programs.

Senator AKAKA. Honorable Anefal.

Secretary ANEFAL. Thank you, Mr. Chairman. I think I briefly touched upon some of the concerns that we have where the unilateral changes were made. Likewise, we have enumerated these major concerns in the written statement.

For example, one of the changes that was made—let me back off. Let me clarify that we were under the impression that the administration was going to do basically updating and necessary changes without really making any significant changes.

For example, I guess partly due to the time constraint between the negotiating and the time for submission of the package to the Congress, when we eventually got a copy of the draft legislation we found out that, for example, the \$250,000 figure has been inserted in there for the FSM to have this machine-readable passport program, and to be done within a period of 1 year. We don't think it is reasonable. We did not really concur to this. It was just maybe an insertion, and we object to it, as an example. Thank you.

Senator AKAKA. Thank you.

Mr. Zackios.

Mr. ZACKIOS. Mr. Chairman, if I may add, I think that section in itself where there was that amendment also goes to question certain mechanisms that we have in place, such as the establishment of a general pact, because these funds are now specifically being identified for us in the sectors, such as allocating \$250,000 for passport programs. That is telling us where our priorities are in the priority sectors that we have established.

These actions, as I also stated in the section 177 agreement, tend to preempt certain actions that, for the Marshall Islands, we have already started; for example, the submission of a changed circumstance petition to Congress. Thank you.

Senator AKAKA. Are there any further comments that you would like to make? Otherwise, I want to say thank you very much to all of you, panel one and two, for your testimony and your responses to the questions.

I declare that the Committee on Energy and Natural Resources in the hearing of the Compact of Free Association is adjourned. Thank you.

[Whereupon, at 4:30 p.m. the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF THE ADMINISTRATION TO QUESTIONS FROM SENATOR DOMENICI

Question 1. The Administration's legislation eliminates FEMA eligibility for the Freely Associated States and replaces the program with the U.S. AID'S Office of Foreign Disaster Assistance (OFDA). Will OFDA fully replace FEMA's disaster and rehabilitation programs and services?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

Question 2. How will losing FEMA eligibility impact the islands?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

Question 3. Are the levels of economic assistance under the amended Compacts sufficient to maintain essential government operations and ensure economic and social stability?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

Question 4. The amended Compacts' trust fund agreements state that each nation will initially contribute \$30 million to the trust funds. How much has each country contributed to date? What assurance does Congress have that any remaining FSM or RMI contributions will be made by the required dates?

Answer. We expect that both the RMI and FSM will comply with the agreements they have signed, and will contribute the funds at the times required in the agreements (see section 215(b) of the U.S.-FSM amended Compact and section 216(b) of the U.S.-RMI amended Compact). We anticipate that each party to each trust fund will jointly make the initial contribution to the respective trust fund.

I met in July with the Secretary of Finance and Administration for the FSM, Mr. John Ehsa, regarding the FSM trust fund. I was told that, at the present time, the FSM has over \$27 million ready to deposit in the trust fund and that they expect to have the full \$30 million in hand by October 1, 2003. Furthermore, Mr. Ehsa stated that the FSM is anxious to deposit the FSM funds, along with the United States contribution as soon as possible after October 1, 2003, in order for the fund to begin generating income and additional corpus in the crucial early months of the life of the trust fund.

While I have not spoken directly with officials of the RMI regarding their trust fund contribution, we have no reason to believe that they will not live up to the agreement they have signed and contribute their \$30 million in accordance with section 216(b) of the U.S.-RMI amended Compact.

With regard to the United States, under the amended Compact, the U.S. contributions are contingent on the FSM and RMI contributions; but otherwise the only event that would delay a United States contribution would be the lack of an appropriation by the Congress. Such an event would occur if the Congress did not pass the authorizing legislation contained in S.J. Res. 16 or H.J. Res. 63, which includes the necessary permanent and indefinite appropriations.

Question 5. How will the trust fund be administered? In particular, please describe the investment strategy for the trust funds.

Answer. The trust fund for the RMI and the trust fund for the FSM will be held in separate financial institutions ("trustee") organized in the United States. Each trustee will hold the trust fund under the direction of a five-member governing body (Joint Trust Fund Committee), of which three members shall be officers of the Government of the United States and two shall represent the RMI or the FSM, respectively.

The U.S., FSM and RMI have signed subsidiary agreements regarding the respective trust funds. These agreements provide that each trust fund will have a governing body as described above, a "trustee" selected from among trust institutions organized in the U.S. with a net worth in excess of \$100 million, at least ten years experience as a custodian of financial assets, and experience in managing trust funds of at least \$500 million that will have legal custody of the funds, and an investment advisor that will advise the governing body on investment decisions. The trust fund subsidiary agreements contemplate investment in a full range of investment vehicles, including common stocks.

An investment strategy will be developed, respectively, by each governing body, with the help of its investment advisor. Until the governing bodies take on their official duties and consult with their investment advisors, it would be premature to predict the specifics with regard to their investment strategy and asset allocation.

Question 6(a). The Department of the Interior has indicated that it will increase its staff in order to administer and oversee future compact assistance. Please explain your Department's potential staff increase, and how the determination was made that this was the appropriate level of staff.

Answer. The DOI's Compact implementation team will be composed of nine staff members. A program specialist was hired prior to fiscal year 2003 and is located in the United States Embassy in Pohnpei, FSM; he will be one of the nine-member team. One position was recently filled in Washington by a senior grants manager, who will serve as the overall program coordinator. Five positions are currently being recruited for an office in Honolulu. These include two financial positions with accounting/auditing backgrounds and one program specialist with an economics background. We are also recruiting two program specialists for the Honolulu office, one with a background in health care and one with a background in education. We are also currently recruiting a program specialist to be placed, subject to approval of the Chief of Mission, in the United States Embassy in Majuro, Republic of the Marshall Islands. Finally, we expect to fill a sixth position in Honolulu early next year, which will be for an engineer to help monitor and oversee infrastructure development. In summary, the DOI's Compact implementation team will consist of nine permanent employees, of whom six will be located in Honolulu, one in Pohnpei, one in Majuro, and one in Washington, D.C. If we need additional help, particularly in the early stages of Compact implementation, we can obtain it through temporary positions, reimbursable arrangements with other Federal agencies, or contractual arrangements.

The determination of the appropriate level of staffing was made after considerable input from external sources and internal discussion within the Department, including comparisons of the staff to dollars ratios in similar financial assistance programs. OIA also evaluated and sought input regarding the mix of personnel; thus there will be specialists in the three major sector areas under the Compact: health, education and infrastructure as well as personnel with strong financial backgrounds. Feedback from several sources indicated a strong need for some permanent on-site personnel. This resulted in a decision to place generalists in each of the embassies, subject to the concurrence of the Chiefs of Mission, who will constantly receive and evaluate information on the ground and either take necessary action to correct problems or pass information to the appropriate specialists. The single DOI position in Washington will serve an overall coordinating role. A position in Washington is necessary because (1) the budget process occurs in Washington, (2) all disbursements are made from Washington, (3) interagency group coordination takes place in Washington and (4) day-to-day liaison with the Department of State is facilitated in Washington.

OIA's staffing proposal was reviewed and approved by the Department, by the Office of Management and Budget and by the Congress in the appropriations process.

Question 6(b). Why won't the additional staff working on Compact issues be located in the RMI or FSM?

Answer. DOI's Compact implementation team will actually have staff permanently located in the RMI and FSM, and most of the staff that is not permanently located in the FAS will nonetheless spend a great deal of time there. The nine positions will be located as follows: one in Washington, D.C. (program coordinator), six in Honolulu (two auditor/accountants, three program specialists and one engineer)

and, with the concurrence of the Chiefs of Mission, one in Majuro (program specialist) and one in Pohnpei (program specialist).

In order to understand DOI's Compact implementation staffing plan, it is important to understand how the overall Compact accountability plan is designed to work and the specific tasks that DOI's Compact implementation team will be responsible for.

The Compact accountability plan is designed to ensure that Compact dollars are properly allocated and accounted for and that the results of Compact spending are properly measured. DOI's Compact team will therefore be responsible for, among other things: (a) providing staffing work for the bilateral joint committees that will approve the allocation of Compact funds and the performance measures and standards (which will in turn require the team to provide substantive analysis on the effectiveness of Compact grants in the areas targeted for spending); (b) reviewing and analyzing the various plans and reports that will be required under the amended Compact; (c) reviewing and analyzing the regular and special audits that will be prepared for the freely associated states or for specific programs; (d) reviewing and analyzing the documentation submitted by the respective freely associated states for Compact expenditures; (e) making frequent visits to project sites and local government offices to verify documentation that is submitted; (f) remaining in contact with local sources to determine if any matters warrant investigation, and determining whether to request investigations by the appropriate Federal entities (which investigations the RMI and FSM have agreed to permit and cooperate with under the amended Compact); (g) working with Federal agencies that are providing services in the freely associated states to promote a coordinated Federal approach to assistance to the region; and (h) coordinating with the office of Insular Affairs home office in Washington, D.C., to ensure that the actions in the field properly reflect policy and that policy is properly informed by what is learned from the field.

The Compact accountability plan does not envision that DOI's Compact implementation team will be a police force which must be able to arrive on the scene of any waste, fraud or abuse instantly in order to catch the perpetrators. Rather, the oversight plan provides various check points at which waste, fraud or abuse can be discovered, whether through discrepancies between reports and documentation and the reality discovered on the ground, through on-the-ground intelligence, through audits, through discovery and disclosure by the local governments (and the Compact's new public sector capacity development grant is designed to improve the ability of the RMI and FSM to discover problems) or through the failure of the Compact budgets to achieve objectively measured performance standards. The amended Compact expressly permits the U.S. to withhold funds if it is subsequently discovered that Compact funds have been spent in an improper manner. Thus, if there are cases in which we are unable to prevent waste, fraud and abuse even with the improved procedures of the amended Compact, we will still have several opportunities to discover it after the fact and exercise remedies in order to make the program whole.

The staffing plan for DOI's Compact implementation team is designed to ensure implementation of the Compact accountability program. Most of the work of the team does not need to be done in the RMI or FSM, as the case may be. Communicating with local governmental officials and project managers; reviewing and analyzing plans, reports, audits, investigations and documentation; staffing the joint committees; coordinating with Federal partners and the home office; reviewing intelligence received from the region; and consulting with regional experts in order to make substantive recommendations to the joint committees can all be done, and in many cases are better done, from outside of the RMI and FSM.

Since the team will require substantive expertise, especially in the primary target areas of health, education and infrastructure, a staffing program that relied primarily on employees permanently based in the RMI and FSM would be inefficient and duplicative. An in-country staffing plan would, for example, require separate health grants experts for each of the RMI, the FSM national government and all four states of the FSM (which function with a substantial amount of autonomy and will be the primary sub-grantees for FSM grants). We think it would make more sense to leverage our resources by having a single health grants expert cover both countries and all four states of the FSM. The same logic would apply to our experts in education and infrastructure.

We were also cognizant of the possibility that employees that are permanently based in the RMI or FSM could be susceptible to losing some of their objectivity. This is why the State Department rotates its overseas personnel frequently.

In light of all of the factors that we had to consider, we came to the conclusion that, rather than rely primarily on employees based permanently in the RMI, the FSM and each of the four states of the FSM, we should have a core team of professionals based in the Pacific that would: (a) make frequent trips through the RMI

and FSM; (b) remain in constant communication with partners and colleagues in the freely associated states, Federal agencies, institutions with expertise on the region and the home office; and (c) be supplemented by a staffer based in each of the RMI and the FSM that would be an “eyes and ears” for waste, fraud and abuse and other problems, and would have the ability to call in additional resources (from the rest of the team, the home office or investigative agencies of the Federal Government) if necessary. For a variety of reasons, we decided that Honolulu would be the best place to locate the core team.

The Honolulu location is the one place in the United States with business day overlap with the freely associated states, Washington, D.C. and the West Coast with its Region Nine offices. Region Nine plays a coordination role for Federal programs, and Honolulu is where programs that serve the freely associated states are based. In-depth institutional knowledge regarding the freely associated states can be found in Honolulu at the East West Center, at the University of Hawaii, with the U.S. Corps of Engineers, and in hospitals experienced in medical referrals. Another very important reason is the ability to recruit and retain high quality professional staff on a permanent basis. The Honolulu team will be able to travel frequently to the freely associated states. While travel costs are high from Honolulu, additional travel costs are offset by not having to supply permanent housing, post differential, home leave, and education for dependents that come with foreign posts.

Needless to say, we will constantly evaluate the effectiveness of this staffing plan and make changes as necessary. However, we have put a great deal of thought into devising the best plan and we are confident that we have come up with a plan that we are capable of implementing successfully.

Question 6(c). How much will your plans cost?

Answer. We budgeted \$800,000, which was appropriated to begin establishing the offices in fiscal year 2003. An additional \$900,000 to fully fund all positions has been requested for fiscal year 2004. Thus, we estimate the total cost for full operations of DOI's Compact implementation team will be approximately \$1.7 million annually.

Question 7. Does the Interior Department have information regarding how future funds might be withheld if problems occur, particularly in the areas of health and education? For example, if schools in the FSM/RMI are not meeting grant conditions, how would the U.S. determine the amount and timing of funds that could be withheld?

Answer. Withholding funds will be a last resort. We believe that our accountability program will succeed not because of any withholding of funds, but because we will work together with our partners in the freely associated states to achieve a better program. We believe that through cooperation with our partners, we will achieve much better accountability than either party could achieve acting alone. Under the amended Compact, U.S. grant assistance may be used for capacity building in the public sector. Grant assistance to this sector will be designed to improve the ability of the RMI and the FSM to prevent and detect waste, fraud and abuse.

While the withholding of funds generally will not be our first option, our ability to do so will give us more leverage to insist that specific steps be taken to improve accountability should that be necessary. We should certainly be willing to withhold funds in cases where there has been an intentional violation of the terms of the Compact, such as in cases of theft or corruption. In general, however, the decision to withhold funds will be made on a case-by-case basis with reference to all relevant factors and in light of the objectives that we are trying to achieve.

We view the performance measures and standards primarily as a planning tool. The failure to achieve objectives generally would not, absent misconduct, argue in favor of withholding funds. Depending on the circumstances, though, it might argue in favor of allocating Compact funds differently. It is not our intention to punish the RMI or the FSM if our Compact investments do not fully succeed in every instance. Rather, it is our intention to use the performance measures and objectives to determine if we are allocating our resources effectively, and to guide adjustments in course as appropriate to maximize our chances of eventual success.

Although we intend to allow the RMI and the FSM to establish their own priorities within the parameters set by the amended Compact, the applicable joint committee would not be expected to approve an annual allocation of U.S. grant assistance which, according to the results of performance measurement, would not be a promising means to achieve improvements in health, education or the other targeted areas. Under such a scenario, the joint committee's best course of action would probably not be to withhold funds, but to insist on appropriate changes to the proposed allocation of grant assistance.

However, if the performance measures (or any of the other information available to us) lead us to discover negligence or intentional misconduct in connection with

the use of Compact funds, we would be much more likely to exercise remedies. Remedies in such case could be exercised directly by the Department of the Interior, rather than by the applicable joint committee.

Question 8. How will Compact grants be protected from the long-term impacts of inflation?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

Question 9. Why was a 2/3 partial inflation adjustment selected and not a full inflation adjustment?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

RESPONSES OF THE ADMINISTRATION TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. Your chart illustrates the estimated decline in per capita assistance over the next 20 years under the proposed legislation. Have you estimated how this decline would affect the rate of migration to the U.S.? Would replacing the partial inflation adjustment (2/3rds) with a full inflation adjustment have a significant impact on estimated per capita assistance, trust fund performance, and on estimated migration rates?

Answer. The chart in question was provided by the witness for the General Accounting Office. She would be in a better position to respond.

Question 2(a). What progress have the FSM and RMI made in developing the technical capabilities necessary to meet the new accountability measures?

Answer. The RMI and FSM have had considerable experience with numerous United States Federal programs and these same requirements and remedies, so there is very little that will be new to them at a professional level. One new element that should help ensure improved performance is the creation of joint management boards that will make determinations on the annual allocation of Compact funds among six sectors and will ensure both program and economic performance goals are being addressed and closely monitored. One of the six sectors is capacity building; this will allow the United States and the freely associated states to identify deficiencies in technical and management capabilities and direct resources toward specific problems areas. This funding will be further augmented by technical assistance in a variety of areas provided by the Department of the Interior, including but not limited to financial management (including procurement), economic and statistical collection and analysis, operations and maintenance of infrastructure, planning and budgeting, and economic development. Interior has already provided technical assistance funding this past year that will aid the freely associated states in complying with new Compact fiscal and reporting requirements.

Question 2(b). Are discussions underway to develop the objectives and performance standards for each of the proposed sector grants (education, health, private sector development, capacity building in the public sector, environment)?

Answer. Discussions have been underway for some time to develop objectives and performance standards for the proposed sector grants. The Office of Insular Affairs recently provided technical assistance funding for the RMI to hire experts to aid it in developing performance standards for OIA to review. The FSM has already proposed performance standards that OIA is reviewing. OIA staff traveled to the FSM in the spring, and attended a July 31, 2003 meeting in Pohnpei on performance standards to make sure they are appropriate. Additionally, the OIA has approved major technical assistance funding for both the RMI and FSM to upgrade their financial management systems.

Question 3(a). The proposed accountability mechanisms include establishment of two joint economic management committees. There are to be three U.S. members on each of these two committees. Have you decided who those three officials will be?

Answer. For this year, the three United States officials will be:

- (1) David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs;
- (2) Matthew Daley, Deputy Assistant Secretary of State for East Asia and the Pacific;
- (3) William Steiger, Special Assistant to the Secretary of Health and Human Services for International Affairs.

The Department of State and the Department of the Interior have the greatest roles in implementing the amended Compact and the Department of Health and Human Services provides many of the important programs in this area (and under the terms of the Compact health is one of the two priority sectors for U.S. grant assistance). It is important to note, however, that regardless of which U.S. officials serve on the joint committees, the U.S. delegation will be able to avail itself of the expertise of an interagency committee that includes all of the relevant departments from the Federal Government. In addition, the ambassadors to the RMI and the FSM, respectively, and the staffs of the Department of the Interior and the Department of State will be able to provide advice and guidance to the U.S. delegation.

Question 3(b). Given the expertise of the Asian Development Bank (ADB) in regional economic development, and their involvement in the FSM and RMI over the past 10 years, doesn't it make sense to have a U.S. official from the ADB as one of the members?

Answer. The joint committees will benefit from the advice emanating from several quarters. The interagency committee will help. Representatives from the Department of Treasury will be involved. We are actively engaged with the ADB on a number of projects.

I visited the ADB in Manila earlier this year to discuss how the United States and the ADB can coordinate assistance in light of the new financial assistance provisions of the Compact. In return, I have been visited in Washington by ADB officials, including Joseph Eichenberger, the U.S. Treasury official who is a Vice-President of the ADB. With this thorough interaction between United States officials and the ADB, we do not believe that membership on the joint committees by a U.S. official from the ADB is necessary.

Question 4. The additional staff to be hired by the Department of the Interior to assure that financial assistance will be used more effectively will not be stationed in the FSM and RMI. Are you confident that the Department will be able to exercise necessary diligence with staff stationed in-country?

Answer. DOI's Compact implementation team will actually have staff permanently located in the RMI and FSM, and most of the staff that is not permanently located in the FAS will nonetheless spend a great deal of time there. The nine positions will be located as follows: one in Washington, D.C. (program coordinator), six in Honolulu (two auditor/accountants, three program specialists and one engineer) and, with the concurrence of the Chiefs of Mission, one in Majuro (program specialist) and one in Pohnpei (program specialist).

In order to understand DOI's Compact implementation staffing plan, it is important to understand how the overall Compact accountability plan is designed to work and the specific tasks that DOI's Compact implementation team will be responsible for.

The Compact accountability plan is designed to ensure that Compact dollars are properly allocated and accounted for and that the results of Compact spending are properly measured. DOI's Compact team will therefore be responsible for, among other things, (a) providing staffing work for the bilateral joint committees that will approve the allocation of Compact funds and the performance measures and standards (which will in turn require the team to provide substantive analysis on the effectiveness of Compact grants in the areas targeted for spending); (b) reviewing and analyzing the various plans and reports that will be required under the amended Compact; (c) reviewing and analyzing the regular and special audits that will be prepared for the freely associated states or for specific programs; (d) reviewing and analyzing the documentation submitted by the respective freely associated states for Compact expenditures; (e) making frequent visits to project sites and local government offices to verify documentation that is submitted; (f) remaining in contact with local sources to determine if any matters warrant investigation, and determining whether to request investigations by the appropriate Federal entities (which investigations the RMI and FSM have agreed to permit and cooperate with under the amended Compact); (g) working with Federal agencies that are providing services in the freely associated states to promote a coordinated Federal approach to assistance to the region; and (h) coordinating with the Office of Insular Affairs home office in Washington, D.C., to ensure that the actions in the field properly reflect policy and that policy is properly informed by what is learned from the field.

The Compact accountability plan does not envision that DOI's Compact implementation team will be a police force which must be able to arrive on the scene of any waste, fraud or abuse instantly in order to catch the perpetrators. Rather, the oversight plan provides various check points at which waste, fraud or abuse can be discovered, whether through discrepancies between reports and documentation and the reality discovered on the ground, through on-the-ground intelligence, through audits, through discovery and disclosure by the local governments (and the Compact's

new public sector capacity development grant is designed to improve the ability of the RMI and FSM to discover problems) or through the failure of the Compact budgets to achieve objectively measured performance standards.

The amended Compact expressly permits the U.S. to withhold funds if it is subsequently discovered that Compact funds have been spent in an improper manner. Thus, if there are cases in which we are unable to prevent waste, fraud and abuse even with the improved procedures of the amended Compact, we will still have several opportunities to discover it after the fact and exercise remedies in order to make the program whole.

The staffing plan for DOI's Compact implementation team is designed to ensure implementation of the Compact accountability program. Most of the work of the team does not need to be done in the RMI or FSM, as the case may be. Communicating with local governmental officials and project managers; reviewing and analyzing plans, reports, audits, investigations and documentation; staffing the joint committees; coordinating with Federal partners and the home office; reviewing intelligence received from the region; and consulting with regional experts in order to make substantive recommendations to the joint committees can all be done, and in many cases are better done, from outside of the RMI and FSM.

Since the team will require substantive expertise, especially in the primary target areas of health, education and infrastructure, a staffing program that relied primarily on employees permanently based in the RMI and FSM would be inefficient and duplicative. An in-country staffing plan would, for example, require separate health grants experts for each of the RMI, the FSM national government and all four states of the FSM (which function with a substantial amount of autonomy and will be the primary sub-grantees for FSM grants). We think it would make more sense to leverage our resources by having a single health grants expert cover both countries and all four states of the FSM. The same logic would apply to our experts in education and infrastructure.

We were also cognizant of the possibility that employees that are permanently based in the RMI or FSM could be susceptible to losing some of their objectivity. This is why the State Department rotates its overseas personnel frequently.

In light of all of the factors that we had to consider, we came to the conclusion that, rather than rely primarily on employees based permanently in the RMI, the FSM and each of the four states of the FSM, we should have a core team of "professionals based in the Pacific that would (a) make frequent trips through the RMI and FSM; (b) remain in constant communication with partners and colleagues in the freely associated states, Federal agencies, institutions with expertise on the region and the home office; and (c) be supplemented by a staffer based in each of the RMI and the FSM that would be an "eyes and ears" for waste, fraud and abuse and other problems, and would have the ability to call in additional resources (from the rest of the team, the home office or investigative agencies of the Federal Government) if necessary. For a variety of reasons, we decided that Honolulu would be the best place to locate the core team.

The Honolulu location is the one place in the United States with business day overlap with the freely associated states, Washington, D.C. and the West Coast with its Region Nine offices. Region Nine plays a coordination role for Federal programs, and Honolulu is where programs that serve the freely associated states are based. In-depth institutional knowledge regarding the freely associated states can be found in Honolulu at the East West Center, at the University of Hawaii, with the U.S. Corps of Engineers, and in hospitals experienced in medical referrals. Another very important reason is the ability to recruit and retain high quality professional staff on a permanent basis. The Honolulu team will be able to travel frequently to the freely associated states. While travel costs are high from Honolulu, additional travel costs are offset by not having to supply permanent housing, post differential, home leave, and education for dependents that come with foreign posts.

Needless to say, we will constantly evaluate the effectiveness of this staffing plan and make changes as necessary. However, we have put a great deal of thought into devising the best plan and we are confident that we have come up with a plan that we are capable of implementing successfully.

Question 5. The Asian Development Bank (ADB) has played an important role in economic development under the compact by providing grants for construction and technical assistance, and by chairing the "Consultative Group" for each of these two nations. This Group is the forum which coordinates assistance and activities among the various donors. Do you object if the new accountability provisions specifically provide for the continued ADB involvement?

Answer. We have a bilateral relationship with each of the freely associated states. We do not believe it prudent to compromise the sovereignty of the United States by giving a formal role in these relationships to a non-United States entity. We ap-

preciate the cooperative relationship we have with the ADB as it pursues its work on programs that help the FAS and will continue to work very closely with the ADB to ensure that our programs are well coordinated to maximize our chances of success.

Question 6. This legislative package provides for an extension, beyond 2016, for U.S. access to the missile test site at Kwajalein Atoll. However, several landowners find the terms unacceptable. Is there a deadline by which time an agreement will need to be reached between the Marshall Islands Government and the Kwajalein Landowners in order to avoid issues with U.S. access in 2016? Given that the current agreement is good until 2016, could this issue be deferred from consideration under this legislation to allow negotiations to continue? Is there a contingency plan to deal with the possibility that the RMI government may be unable to reach an agreement with the landowners soon enough to avoid a disruption in U.S. access to Kwajalein? (There are practical problems with the exercise of eminent domain in the RMI because of traditional land rights.)

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

Question 7. In addition to including the agreements with the FSM and RMI, this new legislation has several “updates” to the Compact Act, within which the two new agreements are nested. The testimony of the FSM and RMI states that these “updates” are, in several cases, substantive and were revealed to the islanders just days before the legislation was transmitted to Congress. Are you prepared to review these changes with them and the Committee staff to determine whether their concerns can be resolved?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

Question 8. The Administration is in the process of reviewing a report which the Republic of the Marshall Islands submitted to Congress seeking additional compensation pursuant to the so-called “changed circumstances” provisions of the Compact. When can we expect the Administration to submit its views to Congress?

Answer. This question has been asked of the United States Negotiator, Office of Compact Negotiations in the Department of State. He will state the position of the Administration on this question.

U.S. DEPARTMENT OF STATE,
Washington, DC, June 3, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate.

DEAR MR. CHAIRMAN: Thank you for your letter of June 2 regarding the Compact of Free Association with the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM).

I am writing in reply to your specific question concerning the implications for expiring Federal programs of the U.S. Compact funding agreed upon with the FSM and RMI under the Compact of Free Association, to the extent that such programs and services continue to be available to State and local governments of the United States.

The State Department’s Office of Compact Negotiations recently renegotiated the economic assistance terms of the Compact of Free Association with the FSM and RMI, and agreed to extend such assistance for 20 years (through 2023), subject to Congressional approval. The Administration is presently preparing legislation, to be transmitted to Congress, incorporating the agreement reached with the FSM and RMI.

Under our agreement, U.S. assistance would be devoted to key economic sectors, with the highest priority accorded to the education and health sectors. While assistance to the FSM and the RMI under existing Federal programs was considered in the formulation of the assistance package, the amount of the assistance package was not specifically structured to substitute for or replace existing Federal programs.

We recognize that it is the prerogative of the Congress to determine whether to extend or continue the eligibility of the FSM and RMI for any particular Federal program. A more complete statement of the Administration’s policy on the relationship between certain Federal programs and the amended Compact is attached.

This letter has been coordinated with the Office of Management and Budget.

We would be pleased to meet with you or your staff, along with representatives from the appropriate agencies on this matter.

Sincerely,

PAUL V. KELLY,
Assistant Secretary, Legislative Affairs.

POLICY REGARDING THE RELATIONSHIP BETWEEN CERTAIN U.S. FEDERAL PROGRAMS AND THE COMPACT OF FREE ASSOCIATION, AS AMENDED, WITH THE FEDERATED STATES OF MICRONESIA (FSM) AND THE REPUBLIC OF THE MARSHALL ISLANDS (RMI)

Under section 221(b) of Title Two of the amended Compact we have recently signed with the FSM and RMI, to the extent authorized by the Congress of the United States, the Government of the United States would make available to the FSM/RMI the services and programs that were available on the effective date of the compact, as amended.

This provision keeps the door open for the continuing eligibility of the FSM/RMI for U.S. federal programs, to the extent provided by the Congress. It does not assume that particular federal programs are to be continued nor does it operate to reinstate any programs that terminated prior to the effective date of the Compact, as amended. It does acknowledge the role of Congress in determining the appropriateness, continuing applicability, and funding for such programs in the future.

The amended Compact, to be submitted by the Administration to Congress for passage, would provide continued economic support to the FSM/RMI. While the Administration was aware of the level, type, and status of existing federal programs when formulating the Title Two assistance, the amount of the assistance was not specifically structured to substitute for or replace existing programs, nor intended to express a view with respect to continuation or reauthorization of any federal program.

The Administration, including agencies administering federal program funds to the FSM/RMI, will continue to update Congress on the appropriateness and effectiveness of federal programs and U.S. funding to the FSM/RMI.

DEPARTMENT OF ECONOMIC AFFAIRS,
FEDERATED STATES OF MICRONESIA,
Palikir, Pohnpei, FM, July 25, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI: I have the honor to refer to your letter of July 18, 2003 in which you transmitted additional written questions from the Committee in connection with its July 15 hearing on the Compact of Free Association. I am pleased to enclose the response to the relevant questions.

I wish to thank you, and through you the Members of the Committee, for holding the hearing and for your continued attention to this matter of utmost importance to my nation.

With best regards, I am
Sincerely,

SEBASTIAN L. ANEFAL,
Secretary.

RESPONSES OF SEBASTIAN ANEFAL TO QUESTIONS FROM SENATOR DOMENICI

Question 1. Are the levels of economic assistance under the Amended Compacts sufficient to maintain essential government operations and ensure economic and social stability?

Answer. There is no established way to determine the right level of government operations or economic assistance. It can be said, however, that the FSM has managed, at current levels of Compact assistance, to provide and maintain a minimum level of acceptable Government services, to achieve social stability and to make some economic progress. In developing its positions for the negotiations on Compact amendments the FSM was assisted by experts funded by the Asian Development Bank, who spent several years analyzing the FSM experience under the Compact. They recommended, and the FSM negotiators proposed to the United States, that assistance should remain at current levels to ensure both the provision of a minimal level of government services and to maintain economic and social stability. Without making any analysis of its own, and citing no disagreement with the FSM's eco-

conomic analysis, the U.S. negotiators put forward offers based only on arbitrary numbers assigned, presumably, by OMB. It is the judgment of the FSM's experts and other objective advisors that the OMB's self described, "last and best offer" falls seven million dollars annually short of the level most likely to be required to avoid a "crash and bum" economic scenario, beginning in the very first year of the new arrangement. We cannot help but wonder why, if the United States Administration is serious about the goals of the Compact, the FSM has been presented with an arbitrary stone wall on the level of grant funding with no refutation or even consideration of our economic analysis, while the levels of grant assistance requested by the RMI have been met, even irrespective of their separate requests for Kwajelein.

Question 2. What will be the impact on the standard of living in your nation under the amended Compacts?

Answer. The impact will be severe, negative and immediate. The FSM National Government has already budgeted for a fifteen percent reduction in the first year of the amended Compact. Things will get worse, not better, as time goes on. With such a negative shock in the beginning followed by annual regular decrements and lack of full indexation for inflation, our experts project an annual decline of GDP by 0.6 percent. It is simply a fantasy to expect the attraction of foreign investment and other aspects of economic growth that the U.S. would like to expect of us. We cannot blame the original Compact negotiators for having had unrealistic economic expectations for a new, small-island undeveloped country, but at this stage we should all know better. The FSM welcomes improved efficiency as a byproduct of improved accountability, and that would show results over time on an otherwise level field. The problem here is going to be the negative initial shock, further complicated by annual decrements and lack of full indexation. Why, some ask, did we sign such a deal? The answer is simple. We had no choice. The Administration has refused further negotiation, and the U.S. Congress is our last hope.

Question 3. How will sector grants be distributed in your nation?

Answer. Pursuant to the terms of the amended Compact and of its associated Fiscal Procedures Agreement, the distribution of sector grant funding will be driven by: (a) the FSM's comprehensive Strategic Development Plan as it evolves during the assistance period; and (b) the FSM National and State annual budgets—all as subjected to continuous scrutiny by the Joint Economic Management Committee (JEMCO). The equities involved in the proportionate internal distribution of grant benefits is also a matter for continuing review and discussion by the FSM State and National leadership.

Question 4. The amended Compact requires your nation to initially contribute \$30 million to a trust fund. How much has your country contributed to date? What are your plans for providing the remaining contributions?

Answer. The FSM as of now has appropriated 26.76 million of the required 30 million dollars that must be contributed by September 30, 2004, and is anxious to see it placed in the Trust Fund as soon as possible. No actual contribution can yet be made, because the Trust Fund instrument only becomes effective upon implementation of the amended Compact. We are examining other possible sources for the remaining contribution, with the incentive that the sooner it is placed in the Fund, the sooner it begins earning income.

Question 5. It is my understanding that the RMI and FSM seek full inflation adjustment as opposed to the 2/3 partial inflation adjustment. Please explain.

Answer. The 2/3 formula in the original Compact, while arbitrary in amount, was conceived by the U.S. Administration to encourage a gradual reduction of the FSM's dependence on external assistance. It was part of the original package that at the time, like now, we had no choice but to agree to. During the recently-concluded negotiations of the Compact amendments the U.S. unilaterally decided to introduce a second "weaning" factor in the form of the decrements. Both of these features, lack of full indexation and the decrements, are reductions in the real level of transfers, and will adversely affect the FSM economy. Each produces an annual 0.3 percent reduction in GDP. While the FSM had no choice but to cope with the annual impediment to its economy due to the lack of full indexation during the first Compact period, we feel that the imposition of double-weaning is unfair and unwise. It will place an even more severe impediment on economic growth than before, further burdening the FSM's efforts to develop its fledgling private sector. In order to avoid that outcome, the FSM has requested the U.S. Congress to remove one of the weaning factors by providing for full indexation, calculated monthly as monthly grant payments are made, and capped at the original 7 percent. Provision for full indexation will maintain the real value of annual grants to ensure continuity of essential Government services and improved prospects for economic growth. It will also allow for increased transfers to the Trust Fund.

Question 6. Does your government have the technical capabilities necessary to meet the terms of future assistance by this fall?

Answer. Yes, and this has been demonstrated by our preparations so far to meet the extensive new pre-award reporting requirements. However, many challenges are involved in our successful compliance with extensive new post-award requirements involving more complex fiscal procedures and new financial management systems nationwide. We have been heartened by the Department of the Interior's understanding of these challenges, and its willingness to work with us in overcoming them, particularly in the early years of the new arrangement.

Both internally and in repeated and ongoing meetings with officials of the Department of the Interior, the FSM Government has been making the necessary preparations. Most recently, we beat by several weeks the assigned deadline to provide a budget for FY 2004 to the United States for review. Our President has established the FSM's JEMCO membership on a provisional basis, so that the necessary preparatory discussions with the U.S. counterparts can proceed. At the time these answers are provided, a ten-day conference of finance and budget officers from throughout the FSM is convened in Pohnpei to meet with officials of the Department of the Interior to continue discussions on the implementation process. Similarly, with regard to the Trust Fund, our designated officials are engaged in discussions with the Department of the Interior on manning the positions necessary to get the Fund up and running as soon as possible.

Question 7. How will information in the decisions, reports, and audits of the joint economic management committee be shared with the public in your nation? Will your government maintain a web site that contains this information?

Answer. It is a little too early to provide specifics in answer to this question, but, yes, there is a Government website that undoubtedly will be utilized in ways that the Government deems appropriate. Up to now, the website has been used, among other purposes, to convey information regarding the negotiations. This use, adapted to meet the new circumstances, will continue. I might add that the FSM, with strong traditions of consensus decision-making, will continue a variety of consultative processes such as broadly-participative economic summits and leadership conferences that overlay and provide guidance to the regular, Constitutional Legislative and Executive functions.

Question 8. What will be the impact on your nation of losing eligibility for FEMA?

Answer. Much has already been said on this subject, and it must be understood that the FSM has no parachute to offset the loss of FEMA. The Office of Foreign Disaster Assistance (OFDA) at the Department of State is simply no substitute for FEMA, a fact that has been openly admitted by the U.S. Negotiator, Al Short, in recent testimony. The U.S. interest in protecting its long-term investment in FSM public infrastructure is an obvious consideration, but the less direct U.S. investment in private infrastructure also should not be discounted. Al Short recently testified that the Administration's intention is to treat the FSM and RMI "like Palau," which does not enjoy FEMA coverage. This situation for Palau, however, was the outcome of a deal made years ago, whereby Palau accepted a U.S. contribution of \$20 million into a trust fund in lieu of FEMA coverage. We wonder whether they would make the same bargain today, when some years ago they suffered a bridge collapse costing many millions and with loss of life, and the total contribution of the U.S. OFDA was fifty thousand dollars.

Question 9. What would be the impact on your nations if programs that are outside the scope of the Compact—such as federal education programs—are not continued?

Answer. The impact would be a collapse of the very sector—education—that everyone seems to agree lies at the heart of the amended Compact's objectives. Don't forget, the Administration confirms that in arriving at its grant level figures it assumed the continuation of federal programs. In the recent hearings, there has been some focus on the vulnerability of the College of Micronesia-FSM to the threat of loss of Pell Grants, and that is very real. But more, the same threat is posed to all other levels of the education system in the FSM if U.S. Federal programs are withdrawn, at the very time when the U.S. Government negotiators have spent the last four years telling FSM negotiators that the number one, top U.S. priority in future U.S. assistance to the FSM is—EDUCATION! Certain people on the Hill would prefer to throw money at the problem rather than continue program eligibility, but there are two problems with that approach: first, after the jawboning is over the money in the amounts required will almost certainly not be there; and second, in this critical field and at this time this far down the road money alone cannot substitute for the programmatic and social connectivity that has been built up over so many years with the concealed U.S. Departments. If this battle is lost, then the

U.S. Government might as well confess that it really does not care about social advancement and political stability in this increasingly strategic region of the Pacific.

Question 10. How will the Compact's immigration provisions impact your nation?

Answer. The FSM, after many months of bilateral, not Compact, negotiation on this highly sensitive subject was able to agree to the negotiated amendments in this area, on the understanding with the U.S. Agency negotiators that with the single exception of now requiring FSM citizens to carry passports when exercising their Compact privileges to travel to and from the U.S., the new provisions do not expand authority previously possessed by the United States under the U.S. Immigration and Naturalization Act. In other words, FSM citizens will not notice any difference in their status coming to, residing in or leaving the United States. We have also agreed with U.S. officials to cooperate in implementing new measures to increase passport information and security features, and to provide a system for sharing with the U.S. criminal conviction information that would be relevant to decisions on admissibility and deportability of FSM or U.S. citizens, as the case may be. We invite attention to the FSM's proposed alternative approach to the U.S., iron-negotiated and unilateral insertions in its legislative proposal, as representing an effective alternative to a curiously uncalled-for and threatening sledgehammer demand.

In light of the above answers, and not knowing now what response the U.S. Congress may provide, we also urge that the Committee seriously consider the last of the FSM's amendment proposals. This is to add a section mandating a Congressional review no later than three years into the amended Compact experience, to determine what adjustments may need to be made.

EMBASSY OF THE REPUBLIC OF THE MARSHALL ISLANDS,
Washington, DC, July 30, 2003.

Hon. PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN DOMENICI: On behalf of the Government of the Republic of the Marshall Islands, I am pleased to forward to you the attached responses from Minister Gerald Zackios to questions that were submitted for the record following the hearing on the Compact, as amended.

Thank you for your engagement and consideration of these issues.

Sincerely,

BANNY DEBRUM,
Ambassador to the United States.

RESPONSES OF GERALD ZACKIOS TO QUESTIONS FROM SENATOR DOMENICI

Question 1. Are the levels of economic assistance under the amended Compacts sufficient to maintain essential government operations and ensure economic and social stability?

Answer. Compact funding, in the past, has been a declining yet essential component of the Republic of the Marshall Islands' (RMI's) government's budget. For FY 2001-2003 period for example, Compact funding, including U.S. Federal programs, have provided 35-40 percent of our budget revenue.

Under the amended Compact, the economic grant assistance and U.S. Federal programs will continue to play an essential role. The amended Compact does provide a transition in the economic grant assistance from the current Compact. While this amount is sufficient for economic and social stability initially, as based on our Medium Term Budget and Investment Framework, our concern is in the medium term since the grant assistance declines at a too rapid pace. This rapid decline is caused by: 1) the \$500,000 annual decrement of the economic grant assistance with the decremented amount going into the Compact Trust Fund; and 2) the loss to inflation since Compact funds are only partially adjusted (2/3 of the GDP Implicit Price Deflator).

While we strongly believe we can increase local revenues, cutting costs and attaining other public sector efficiencies, we cannot do it at such a rapid pace. This can result in fiscal instability, with evident negative repercussions on the economy and social welfare, in the medium term. This is why my Government has been stressing the need to maintain at least the real value of the Compact financial assistance by applying a full instead of only a partial inflation adjustment. Even given the full inflation adjustment, the RMI's reliance on Compact funds will significantly decrease over the term of the 20-year period.

Question 2. What will be the impact on the standard of living in your nation under the amended Compacts?

Answer. In the short term, the amended Compact will have a positive impact on the RMI's standard of living. The RMI Government has already planned on placing a majority of grant assistance funding in the education sector to improve education standards at all levels. The second priority is investments in the health sector and the third in infrastructure development and maintenance.

However, there are two caveats. First, if some or all of the U.S. Federal education programs are discontinued in FY 2004, the increased investments we have targeted for education will merely, and maybe only partially, cover the continuance of these programs on our own. Thus, instead of education being a priority of the RMI government and the Compact, we will have a difficult time providing the range of education programs and services and will severely detract from any added emphasis and investment in education. This will injure our standard of living in the short, medium and long term.

Second, as we have stated in our testimony, the RMI is vulnerable to natural disasters. FEMA has played a crucial role for rehabilitation and mitigation during these intermittent crises. Since the U.S. AID's Office of Foreign Disaster Assistance does not replace FEMA's rehabilitation and mitigation programs then the RMI would be confronted with these costs if a major disaster occurred. Such an event would severely injure the RMI's standard of living by either not adequately responding to after effects of such disasters or causing us to take away resources from other areas to fill the rehabilitation or mitigation needs. We simply do not have the financial resource base to respond to such cost-prohibitive rehabilitation and mitigation.

In the medium term, however, as per the response to Question 1, the provision of government programs and services will decline if no other funding sources are generated. This will also impact the private sector since much of the private sector services are related to the fiscal stability of the government. While this is changing, it will take time to orient the private sector more towards our productive sectors: fisheries and aquaculture and tourism. Thus, in the medium term, as of 2010 and thereafter, living standard improvements will probably stagnate or the improvements will slow.

Question 3. How will grants in the areas of education and health be distributed within your nation?

Answer. The education and health sector grants are identified in our Medium Term Budget and Investment Framework (MTBIF). We adopted this medium term performance budgeting approach in the planning of our FY 2003 budget. Our current MTBIF, which was just approved, indicates the specific amounts of Compact funding that will go toward these two priority sectors. For example, in FY 2004, the first year of the amended Compact, we have identified \$10.2 million for the education sector and \$6 million to go to the health sector.

These amounts are further broken down in the sector programs. For instance, for the education sector, these amounts will mainly go to primary and secondary education to include standard development, teacher training and retention, curriculum development and program delivery. In addition, we will invest part of the Compact's infrastructure funds in the building and maintenance of much neglected education facilities. The education program will be monitored using a set of indicators and other measurements to see if the Compact and other investments are having a real impact. The agency responsible as well as our Economic Policy, Planning and Statistics Office will review these measurements. The measurements will also be reviewed by the U.S.-RMI Joint Economic Management and Financial Accountability Committee to ensure the Compact funds are being used effectively and have real results.

The health program is currently being formulated and will have the same approach of the education program.

We realize that installing such a performance-oriented financial management and accountability system will take time. This is why we are first concentrating on the education, health and infrastructure sectors. We hope to apply the system government-wide in 2-3 years time.

Question 4. The amended Compact requires your nation to initially contribute \$30 million to a trust fund. How much has your country contributed to date? What are your plans for providing the remaining contributions?

Answer. The RMI has set aside a portion of the Compact "bump-up" funds and part of the Compact's capital investment funds in FY 2002 and FY 2003 to be used as the RAM's initial contribution for the Compact Trust Fund. This set-aside now amounts to \$25 million. Thus, the RMI can meet its Compact Trust Fund commitment that is to be \$25 million once the Compact Trust Fund becomes operational (after the amended Compact becomes U.S. and RMI law) with a further \$2.5 million to be contributed in FY 2005 and \$2.5 million in FY 2006.

I should note that while the PAR does have the funds set aside, we did make the conscious sacrifice of not investing in our infrastructure for the past two years.

While this decision has injured our infrastructure in the short term, it has provided us the funds to invest in future generations of Marshallese and make the Compact Trust Fund a more viable source of funding post 2023.

An example of this delay in infrastructure investment and an urgent need that must be met is the paving of the Majuro International Airport. Since the government set-aside most capital investment funds for the Compact Trust Fund, it could not finance this project though the FAA identified the urgency of the repaving in 2002. Since that time we have sought various sources of funding but failed to find an appropriate source. We have been working to include the \$10 million needed for repaving in the FAA reauthorization bill. Tickets to/from the RMI are surcharged with the amounts contributing to the Airport Trust Fund, and Continental and Aloha Airlines, the two main airport users, have supported our approach. Unfortunately, we have not been successful. As a result, we will have to take the funding from our Compact Trust Fund set-aside to address this urgent project. The closing of the airport, which is an immediate possibility, will have disastrous ramifications on the RMI economy as well as for travel within the region and to/from the Ronald Reagan Missile Test Site at Kwajalein Atoll.

Question 5. It is my understanding that the RMI and FSM seek full inflation adjustment as opposed to the 2/3 partial inflation adjustments. Please explain.

Answer. The partial inflation adjustment (2/3 of the U.S. GDP Implicit Price Deflator) effects the Title Two sector grant funding, Compact Trust Fund contribution and Kwajalein landowner compensation for the U.S. use of Kwajalein Atoll. Our main argument is that the RNA's defense, security and other commitments and obligations under the Compact do not erode yet the U.S. economic and finance commitments do erode simply because of the loss of the value of the funds due to only a partial inflation adjustment.

Secondly, from an economic and finance perspective, as we have shown in our issue paper that fully outlines our views, there are negative impacts.

For the sector grant funding, as stated in response to Question 1, while the RMI believes it can generate revenue, create efficiencies and reduce costs, the rapid decline of this funding due to the decrement and the partial inflation adjustment will create a growing funding gap that occurs at a rate in which we don't feel we have the capacity to quickly fill. We believe that if a full inflation adjustment was provided the fiscal stability that is warranted by the Compact will be maintained and we will be able to improve and further develop public services while further facilitating private sector development and, thus, economic stability.

For the Compact Trust Fund, there are two points. First, our analysis, which is similar to the GAO's, points out that the distributions from the trust fund will not be sufficient to supplant the Compact grant assistance in the medium term. We see the Compact Trust Fund as integral to our future fiscal stability. As it is structured now, it will not meet that objective. Second, the U.S. Administration has allowed, within the Compact Trust Fund Agreement of the amended Compact, that the distributions from the Trust Fund that will begin in 2024 to consist of the prior year's Compact's Title Two sector grant assistance PLUS a full inflation adjustment. Such an approach is inconsistent. We are confounded that the Administration does not allow full inflation to apply to the sector grants between 2004-2023 and the U.S. Trust Fund contributions but will allow the monies drawn from the Trust Fund to be based on a full inflation rate. Thus, our Trust Fund will have inadequate inputs and a much larger demand in the post 2023 era.

For the Kwajalein landowner compensation, the landowners are providing their major resource, their land, for an extended period to at least 2023 and potentially to 2086. Yet, despite this obligation and commitment of the landowners, the U.S. is only partially adjusting the land use payment. In essence, the landowners are giving the United States Government a rebate annually for this land as the value increases and the payments don't increase at the same rate. Thus, the longer the U.S. uses Kwajalein Atoll, the lower cost for the U.S. and the more loss of value to Kwajalein landowners. This is simply not right and inconsistent with practices within the United States.

The bottom line is that the RMI is not really asking for more funding, but asking to be dealt with fairly. We would like the funding provided under the Compact to maintain its real value so that fiscal stability and economic progress can continue to be made. We do not want the fiscal and reverberating economic shocks and value loss that has occurred during the current Compact. As mentioned, we do not see why the U.S. obligations and commitments should erode if the RMI does not erode its security, defense and other obligations and commitments.

Question 6. In your view, does your government have the technical capabilities necessary to meet the terms of future assistance by this fall?

Answer. The RMI government, with the assistance of the Asian Development Bank and the U.S. Department of the Interior's Office of Insular Affairs, is concentrating on building the technical capacity not only to implement the Compact's Fiscal Procedures Agreement (FPA) but also to have a government-wide performance budgeting and financial management system.

We have implemented a step-by-step process by concentrating on those ministries receiving the largest portion of Compact funds—education and health. We have also installed a Medium Term Budget and Investment Framework—a 5-year rolling budget framework that allows us to review past expenditure, plan the next year's expenditure, and look at budget trends two years into the future. We initiated this system for our FY 2003 budget last year and the same system is being used for FY 2004.

For the sector grants, the Ministry of Education has already prepared its FY 2004 Education Program Portfolio. The program was recently submitted to the U.S. Department of the Interior for its review in anticipation of the first Joint Economic Management and Financial Accountability Committee (JEMFAC) meeting scheduled for the end of August. The program identifies the source of ministry funding, including Compact funding, where the funding is targeted, and what objectives will be served and results achieved. We are currently doing the same for the Ministry of Health. In addition, we have completed our first Infrastructure Development and Maintenance Program. This program identifies our priority capital investment and maintenance needs. Projects are now being selected for which Compact funds will be targeted.

As you can ascertain from the above, we are building our capabilities but it would be misleading to say they are all present and we can fully comply. Thus, we encourage the continued cooperation, support and technical assistance from U.S. Department of the Interior so that we have an ongoing system and capabilities. This support will not only improve Compact funding accountability but also allow us to develop a more efficient and result-oriented public sector budgeting and financial management system that provides quality public services and a supportive and maintained infrastructure to facilitate private sector development.

Question 7. How will information in the decisions, reports, and audits of the joint economic management committees be shared with the public in your nation?

Answer. The U.S.-RMI JEMFAC will have two members from the RMI government. The recently established Economic Policy, Planning and Statistics Office (EPPSO) will support the RMI JEMFAC members. EPPSO will be responsible for not only organizing the government's inputs to the JEMFAC but also in monitoring and providing public information. In addition, the current negotiations of the Compact have occurred fully in the public eye. The Compact Negotiations Office (which will transition to become part of EPPSO), have held extensive public meetings, provided information for the local press (newspaper, radio, and television) and provided information on the Internet for public access. This type of public liaison is envisioned to continue. In addition, the local newspaper follows government activities quite closely and will most likely continue to provide public information on the government's activities as well as Compact implementation.

Question 8. What will be the impact on your nation of losing eligibility for FEMA?

Answer. As you know and as we have attempted to explain in our issue paper on the subject, FEMA has provided unparalleled assistance to the RMI during the current term of the Compact. The amended Compact provides some remedies to replace FEMA eligibility but does not fully cover what has been provided in the past and leaves our disaster sensitive islands vulnerable in terms of disaster mitigation and rehabilitation.

The amended Compact's disaster-related elements are: FEMA provides a \$50,000 grant annually to help formulate a disaster preparedness plan as well as assist related capacity building; the services of U.S. AID's Office of Foreign Disaster Assistance (OFDA) for disaster emergency response; and the establishment of a disaster relief "sinking fund" with the United States contributing \$200,000 annually and the RMI government matching this contribution. While this assistance is beneficial in the preparation and immediate response to disasters that may occur, a gap is evident in terms of FEMA's mitigation and infrastructure rehabilitation. This is especially important regarding infrastructure since most of our country's infrastructure was, and will continue to be, built with Compact funds. In essence, the disaster rehabilitation is a way of protecting our joint investments.

In the past, FEMA has provided intermittent assistance for disaster mitigation and rehabilitation. The problem is that if these resources are no longer available, the RMI will: a) not be capable of rebuilding destroyed infrastructure; or b) not be able to mitigate specific disasters, such as a drought in 1998 for which FEMA provided much needed assistance in 1998. The amount of disaster assistance provided

over the current term of the Compact (17 years) amounts to about \$25 million. If the RMI had to provide these funds on its own either there would have been an inadequate response resulting in loss of human life and deteriorating living standards or the RMI's fiscal and economic stability would be in jeopardy. This same caution would apply to the amended Compact period if disaster rehabilitation for public infrastructure and mitigation were not provided.

Question 9. What would be the impact on your nation if programs that are outside the scope of the Compact—such as federal education programs—are not continued?

Answer. U.S. Federal education programs have proven an integral, not supplemental, component of the RMI's education system. Besides the funding, the programs more importantly provide technical expertise, models, guidelines, etc. that have allowed us to either strengthen our own efforts or provide educational services that were absent.

If the Federal education programs, such as special education (SEPPIE), bilingual and CARE under the No Child Left Behind Act, and Head Start, are discontinued the RMI will be forced to redirect financial, human and other resources to try to replace these programs on its own or to eliminate the services these programs provide altogether. In fact, there is no way the RMI government can fully replace these programs simply because we would have to find \$10-\$12 million annually to do so. We simply do not have these financial resources and this is despite our emphasis on strengthening education. As indicated above, we are targeting a majority of our Compact grant funding to education. Even with this significant added emphasis, we could not replace these programs. As the U.S. Compact Negotiator has stated, we did not negotiate our Title Two grant assistance package thinking we had to replace these instrumental Federal education programs. Thus, our education system would be downgraded and we would ultimately reduce the quality of our future labor pool as well as create youth and related downstream societal problems that will negatively impact our living standards.

The eligibility of Pell grants is an even more significant issue. Simply put, if Pell grants are not provided to Marshallese students, the College of the Marshall Islands, a Land Grant institution, will most likely cease to exist and there would be limited post secondary opportunities for our students to attend U.S. colleges and universities. The result would be a severely under-educated population, no appropriate resources for our labor market, and inadequately educated Marshallese emigrating to the United States.

Last, Mr. Chairman, while there has been criticism of the RMI in the application of some of these education programs, no one has ever looked at the extraordinary benefits that these programs have provided. For instance, the Pell grant program, under the current Compact, has educated a generation of Marshallese in the last 17 years—significantly more of our youth have received post secondary education in the past 17 than in the entire pre-Compact period. We are more than willing to place more of a focus on education and measure our performance to show real results. We should concentrate on building our capabilities rather than taking away the resources that help us develop one of our vital and one of our very few resources—our people.

Question 10. How will the Compact's immigration provisions impact your nation?

Answer. Although changes to the Compact's immigration provisions have been an issue of great contention and controversy with my Government, we believe that the negotiated provisions deal with the needs and concerns of both governments.

My Government has recently acquired new equipment and facilities to change our current passports to a more secure system in compliance with the new Compact immigration provisions. Implementation of this new system will take some time as will implementation of the requirement that all RMI citizens possess passports for purposes of entry into the United States under the Compact.

One significant improvement in the current immigration regime under the Compact is the elimination of the requirement of Employment Authorization Documents (EAD) in order for Marshallese to work in the United States. This has previously been a source of great frustration to our people who have sought and gained employment in the United States.

Long waiting periods for the issuance or renewal of EADs have resulted in significant disruptions and economic hardships for qualified Marshallese seeking or retaining employment in the United States. We believe that this change will also benefit Marshallese who choose to migrate to the United States in the future under the amended Compact with an increased emphasis on education and health. In the long term, we believe that those of our people who choose to migrate to the United States will be in a better position to increase their contributions to both the United States as well as the RMI's economy.

Mr. Chairman, my Government views the immigration provisions in the Compact as one of the cornerstones of free association itself. These immigration benefits are priceless. The new immigration provisions will be successful only if both nations work together in good faith to ensure fair and open implementation. It is crucial that any measures promulgated by the United States under the new provisions be consistent with the overall intent of the immigration provisions contained in Section 141 of the amended Compact taking into account the "special and unique relationship" between both countries and the right of Marshallese to establish and maintain "residence" in the U.S. For our part, my Government is prepared to take necessary and appropriate measures to implement the new provisions in cooperation and consultation with the U.S. in order to allay legitimate U.S. concerns.

Question 11. Have Kwajalein landowners signed an amended land use agreement with the RMI government? If not, what steps are being taken to ensure that the landowners enter into a land use agreement?

Answer. At present, the Kwajalein landowners have not signed an amended Land Use Agreement (LUA) with the RMI government. The existing LUA of 1982 is valid through 2016 under the terms of the existing Military Use and Operating Rights Agreement (MUORA) for the use of Kwajalein.

The RMI Government has on numerous occasions invited the Kwajalein Negotiation Commission (KNC), a group that purports to represent all the landowners of Kwajalein Atoll to discuss a new or amended LUA based on the proposed MUORA extension. The KNC's response has been that it is not interested in discussing the terms a new or amended LUA because in their view, compensation under the extended MUORA is inadequate.

Unfortunately, given that the RMI will have national elections in November of this year and the political sensitivity of these issues, we do not anticipate that we will be in a position to have serious discussions on a new or amended LUA until next year. In the interim, my Government is prepared to honor the terms of the existing LUA of 1982, and make payments to the landowners pursuant to that agreement until such time as a new LUA is negotiated and concluded. Under these circumstances, we are prepared to hold any additional funds which would otherwise be payable to the Kwajalein landowners in a separate account until such time that a new or amended LUA has been concluded.

In my Government's view, there are two aspects of the proposed MUORA which if addressed would facilitate a timely conclusion to a new or amended LUA in the future. First, as noted above in my answers to previous questions, the application of full inflation to the MUORA payments will allow these funds to maintain their real value and prevent what over time will in effect be a rebate to the U.S. Government for its use of Kwajalein. Second, we firmly believe that extending the date of early termination from the present 2023 to 2030 will achieve the necessary long term commitment desired by both my Government and the Kwajalein landowners in terms of providing an adequate guaranteed additional term so we can work with the Kwajalein landowners in the establishment of a trust fund as well as provide a secure environment for increased investment at Kwajalein including a new fiber optic cable with joint RMI government and U.S. Army participation. The RMI Government remains fully committed to extending the military use agreement for Kwajalein and will live up to its obligations under this agreement.

U.S. DEPARTMENT OF STATE,
Washington, DC., September 25, 2003.

DEAR MR. CHAIRMAN: Following the July 15, 2003 hearing, at which Director Albert V. Short testified, additional questions were submitted for the record. Please find enclosed the responses to those questions.

If we can be of further assistance to you, please do not hesitate to contact us.
Sincerely,

PAUL V. KELLY,
Assistant Secretary Legislative Affairs.

[Enclosure.]

RESPONSES OF ALBERT V. SHORT TO QUESTIONS FROM SENATOR DOMENICI

Question 1. Was the RMI Government told during the negotiations process that Section 177 of the Compact and the related nuclear claims issues were outside of the scope of the negotiations?

Answer. The Agreement Between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the

Compact of Free Association (Section 1-77 Agreement) came into effect in 1986 at the same time as the Compact and “constitutes the full settlement of all claims, past, present and future, of the Government, citizens, and nationals of the Marshall Islands which are based upon, arise out of, or are in any way related to the Nuclear Testing Program, and which are against the United States, its agents, employees, contractors and citizens and nationals, and of all claims for equitable of any other relief in connection with such claims.” Accordingly, there were no nuclear claims issues to be negotiated and the Section 177 Agreement continues in effect as reflected in section 462(a) of the U.S.-RMI Compact which lists the Section 177 Agreement among those “which shall remain in effect and shall survive in accordance with their terms.”

Question 2. Did the Special Negotiator have authority to negotiate changes to the Compact regarding nuclear claims issues?

If not, under what authority was the proposed paragraph 103(e)(3), regarding section 177, added to the proposed amendments to the Compact?

Answer. As noted above in response to question (1), all nuclear claims were settled in 1986 in the Section 177 Agreement and section 462(a) of the U.S.-RMI Compact reflects U.S. and RMI agreement that the Section 177 agreement continues in effect. The Administration's proposed paragraph 103(e)(3) regarding section 177 does not amend the U.S.-RMI Compact. It updates P.L. 99-239 by noting that the payment required under section (1) of 103(e) has been paid, and, at the same time, to avoid any misunderstanding, makes clear that updating P.L. 99-239 does not create any rights or obligations beyond those contained in the original P.L. 99-239 and that the Section 177 Agreement was a full and final settlement of the nuclear claims.

Question 3. Why were the Congress and the RMI government not informed of the U.S. intention to modify Section 177?

Answer. As noted above in response to question (2), the U.S. did not modify Section 177 and nothing in the Administration's proposed legislation purports to do so or has the effect of doing so.

Question 4. What is the purpose and intent of the proposed new Paragraph 103(e)(3)?

Answer. As noted above in response to question (2), paragraph 103(e)(3) updates P.L. 99-239 by noting that the payment required under section (1) of 103(e) has been paid, and, at the same time, to avoid any misunderstanding, makes clear that updating P.L. 99-739 does not create any rights or obligations beyond those contained in the original P.L. 99-239 and that the Section 177 Agreement was a full and final settlement of the nuclear claims.

Question 5. Why does the proposed Paragraph 103(e)(3) not make reference to Article IX of the Section 177 Agreement?

Answer. The proposed paragraph 103(e) is an update of P.L. 99-239 paragraph 103(g). As was appropriate, the latter did not make reference to Article IX of the Section 177 Agreement and there was no reason to do so in the revision the Administration has proposed.

This paragraph of the legislation mentions specific articles of the Section 177 Agreement in connection with the full and final settlement of all claims related to the nuclear testing program. Article IX of the Section 177 Agreement spells out that the RMI can, under specific circumstances, submit a request to Congress for provision for specified injuries without commitment on the part of the United States that Congress will authorize and appropriate funds for such injuries. Article IX is not a basis for legally enforceable claims, and thus is not relevant to the espousal provisions contained in paragraph 103(g) of P.L. 99-239 or paragraph 103(e) of the Administration's proposal.

Question 6. Section 103(k), as proposed, states that the Comptroller General shall have the authorities necessary to carry out his responsibilities including the authority to audit all grants, program assistance, and other assistance provided under the Compact. Does this authority include the ability of the Comptroller General (or the Comptroller's representative) to observe the Joint Economic Management Committee and other processes that will determine the allocation, objectives and performance standards affecting the use of U.S. assistance under the proposed Compact, as amended?

Answer. No. The Comptroller General shall have the authority to audit all grants, program assistance, and other assistance provided under the U.S.-FSM and U.S.-RMI Compacts but not to observe the intergovernmental deliberations or other processes by which the allocation of the assistance, the objectives of the assistance and performance standards are determined.

Question 7. Section 104(b)(2), as proposed, requires that up to \$250,000 shall be used by the RMI and FSM for the purpose of increasing the machine-readability and

security of passports. Given the authority of the Government of the United States to attach grant conditions under sections 212/213 (Accountability); and majority U.S. membership on the Committee established pursuant to sections 213/214, is Sec. 104(b)(2) necessary to assure such use of these funds?

Was this amendment negotiated with the FSM and RMI, or made unilaterally by the U.S.?

Answer. This amendment, which allocates a sum of up to \$250,000 per country to develop secure travel documentation, is proposed as part of the implementing U.S. legislation, rather than as an amendment to the Compacts themselves. This provision is intended to set an appropriate and necessary earmark on a one-time basis of a very small portion of the massive U.S. assistance package to the FAS. Wherever possible, the United States should strive to ensure that all countries issue passports and travel documents that meet the highest possible standards of integrity. The compacts allow FAS nationals to enter the United States without a visa for stays that may be prolonged and involve residence and employment. It is therefore appropriate and desirable that the security level of their passports parallel, at a minimum, those to go into effect for nationals of Visa Waiver Program countries, who will be required to possess machine-readable passports even though their visits are limited to 90 days for the sole purpose of tourist or business visits. This amendment is intended to ensure expeditious development of passport security infrastructure in the FAS.

Machine-readable passports are more secure, more difficult to forge, enhance efficient and timely processing at busy ports of entry such as Honolulu Airport, provide for the possibility of biometric information to identify travelers more positively (and thereby help avoid delay and complications to legitimate travelers that may result from mistaken identity), and in general more thoroughly promote the protection of the security of the United States and the FAS alike. Allocation of up to \$250,000 of U.S. assistance funds for this purpose on a one-time basis per FAS nation is an excellent investment in national security. Further, with respect to the Republic of the Marshall Islands, a program of passport security funded in this way is particularly appropriate given that nation's past history of selling its passports to third country nationals. In other words, it is important that such capacity be developed as soon as possible.

It has been the understanding of the Administration that the FAS are not opposed to passport security, a matter that benefits all involved nations, but have concerns about their ability to pay for more secure passports themselves. Therefore, this provision provides that the United States will pay, in the first year the Compacts, as amended, are in effect, for such secure documents out of the U.S. assistance funds specifically set aside, under the Compacts, as amended, for the purposes of public capacity building—a sector which, by its terms (see Article II of the Fiscal Procedures Agreements), specifically includes immigration controls, which would include travel documentation infrastructure. This amendment ensures that our countries' mutual security needs will be addressed immediately upon entry into effect of the Compacts, as amended.

Question 8. Given the authority of the Government of the United States under proposed sections 212/213 (Accountability) and under proposed sections 213/214 (Joint Economic Management and Financial Accountability Committee), is paragraph 104(b)(8) [sic] necessary to assure the development of the required information sharing capability?

Was this amendment negotiated with the FSM and RMI, or made unilaterally by the U.S.?

Answer. The requirement, in paragraph 104(b)(3) of the proposed legislation, that the RMI develop the capability to provide reliable and timely information needed in enforcing criminal and security-related grounds of admissibility and deportability is a very important element in maintaining the security of our borders and the safety of the U.S. public. The financial accountability provisions of the U.S.-FSM and U.S.-RMI Compacts do not cover this issue.

Question 9. What was the basis for proposing the deletion of the Statement of Congressional intent in Section 104(e) of P.L. 99-239 regarding adverse consequences of the Compact?

Answer. The Administration's proposed approach to addressing Compact impact is different from that reflected in Section 104(e)(1). That provision focuses only on the "adverse consequences" on Compact migration, and does not encourage a balanced analysis in which the costs incurred by U.S. jurisdictions as a result of Compact migration are weighed against Compact benefits in such areas as economic activity, tax revenue, labor supply and opportunities for local contractors. Under the former process, each affected jurisdiction attempted to justify its request for assistance by preparing reports that focused only on the negative impacts of migration.

This process required each jurisdiction to expend a great deal of resources and effort to produce reports that were not balanced and, ultimately, were not very useful. The Administration approach would eliminate the need for this wasteful process, and would instead provide a mandatory appropriation for Compact impact that would be divided in a manner that is simple, fair, transparent and practical.

Question 10. What was the basis for proposing to change Section 105(k) of P.L. 99-239 so that the availability of DOD medical facilities for properly referred FAS citizens is no longer required?

Answer. There is no intent to change the access for citizens of the Freely Associated States (FAS) citizens to Department of Defense (DOD) medical facilities. The Compact made citizens of the FAS eligible for referral to DOD medical facilities on a space available and reimbursable basis. The same eligibility is continued in the Compact, as amended.

During a final review of the proposed Administration legislation, Administration legal advisors recommended a minor change to the language of the original Compact Act, which, as written, could be read incorrectly to make the provision of such medical care mandatory, irrespective of space and cost considerations. Such a reading would be inconsistent with actual practice and policy, which has been, for practical reasons, to provide such medical care only on a space available and cost reimbursable basis for FAS patients properly referred by their governments. It was therefore necessary to modify this language accordingly. This change to section 105(k) of P.L. 99-239 (section 105(i) in the Administration's proposal) was not coordinated with the FSM or the RMI Governments because it accurately reflects the current Status of Forces Agreements with those two governments as well as the amended Status of Forces Agreements they just signed.

Question 11. What are the basis for proposing the deletion of the Congressional requirement in section 105(b)(4) of P.L. 99-239 that the Secretary of the Interior and the Secretary of State shall serve on the Interagency Group on Freely Associated States' Affairs?

Do you believe it would be appropriate to have such a Group without the participation of these two officials or their representatives?

Answer. Under the Policy Coordinating Committee for East Asia chaired by the Assistant Secretary of State for East Asian and Pacific Affairs, there is a subgroup on the Compacts of Free Association chaired by the Deputy Assistant Secretary of State for East Asian and Pacific Affairs responsible for Freely Associated States Affairs. The Deputy Assistant Secretary of the Interior for Insular Affairs is also on that Compact of Free Association subgroup as are representatives of all other appropriate departments and agencies. All the agencies that were previously represented under E.O. 12569 are represented. There is no need for singling out any agencies in the legislation.

Question 12. Why are the last ten lines of section 105(c)(2) not deleted in the proposal—they only relate to the time period 1986-1989—What purpose do they now serve?

Answer. The Administration recognizes that section 105(c)(2) no longer has any effect. The last ten lines of section 105(c)(2) make this clear. The Administration intentionally did not propose to delete the last ten lines because to do so would appear to give the section new effect. The Administration's intentions could also be achieved by deleting all of section 105(c)(2), but the Administration would not support deleting only the last ten lines. It updates P.L. 99-239 by noting that the payment required under section (1) of 103(e) has been paid and at the same time makes clear that updating P.L. 99-239 does not create any rights or obligations beyond those contained in the original P.L. 99-239 and that the Section 177 Agreement was a full and final settlement of the nuclear claims.

Question 13. Hasn't the United States paid all Indefinite Land Use Debts as authorized under Section 105(n) of P.L. 99-239?

Answer. The Administration's financial obligations have been met, including timely payments for land use.

Question 14. Section 105(h)(5) of P.L. 99-239 provided for the extension of the Pell Grant Program, the Supplemental Educational Opportunity Grant Program, and the College Work-Study Program. Why is this paragraph proposed to be deleted?

Was this amendment negotiated with the FSM and RMI, or made unilaterally by the U.S.?

Answer. Section 105(h)(5) of P.L. 99-239 was deleted because the eligibility of the residents of the FSM and RMI for the Pell Grant Program, the Supplemental Educational Opportunity Grant Program, and the College Work Study Program was addressed more recently in 1998 under the current provisions of title IV of the Higher Education Act of 1965, as amended (P.L. 105-244).

Section 105(h)(5) is contained under Title I of P.L. 99-239, which is purely domestic legislation, as opposed to the bilateral government-to-government agreement contained in Title II of that public law. Therefore, this provision was not negotiated with the FSM or RMI.

Question 15. Which department of the U.S. Government do you intend to Chair the Joint Economic Management Committees, State, the Interior, or some other department?

Answer. For this year, the three U.S. representatives to the JEMCO/JEMFAC will be Matthew Daley, Deputy Assistant Secretary of State for East Asia and the Pacific; David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs; and William Steiger, Special Assistant for International Affairs to the Secretary of Health and Human Services. Decisions regarding subsequent representatives and chairmanship will be made once the amended Compacts take effect.

Question 16. Is there a requirement that the three U.S. members on the Joint Economic Management Committees concur in a U.S. position before there is a vote of the Committee?

If not, wouldn't this pose a problem by not having a single U.S. policy on the use of U.S. assistance?

If so, which U.S. department and official will have the authority to resolve any internal disputes regarding U.S. policy?

Answer. The JEMCO and JEMFAC are decision-making bodies created by the respective Compacts. Major decisions of the JEMCO and JEMFAC will reflect judgments, based upon the best available information, regarding the proper allocation of funds among the various eligible sectors and the specific conditions that should apply to the grants. We expect much of the work of the five members to be collegial and collaborative and that all of the members of each joint committee, including the members from the freely associated states, will work together to review, discuss and decide on these issues. Where votes are taken, however, we would expect a unified U.S. government policy to be followed by the three members representing the U.S. government. Internal disputes regarding U.S. policy will be resolved through usual interagency processes: As with any other internal dispute regarding U.S. policy, the ultimate authority resides with the President.

Question 17. In 2003, the source of annual financial assistance is to shift from appropriations to the U.S. Department of the Interior to proceeds of the Trust Funds. In both cases, the funds are to be used for the purposes set forth in section 211.

a. Will officials of the Trust Fund negotiate grant terms and conditions after 2023, or will that be a continuing responsibility of the three U.S. members of the Joint Economic Management Committees?

Answer. After 2023, proceeds from the trust funds will provide an annual source of revenue for assistance in the sectors described in section 211 of the Compacts, as amended, or other sectors as mutually agreed by the U.S. and the FSM and RMI respectively, with priorities in education and health care (Article 3 of the Trust Fund agreements). The U.S. will continue to have the three members on the joint economic management committees and will have three voting members on the joint trust fund committees, including the chairman. There is no requirement that the proceeds from the trust funds be disbursed to the FSM and RMI through grants; however, before any disbursements may be made to the FSM and RMI, the joint trust fund committees are to determine the fiscal procedures, including remedies, to be used in implementing the trust fund agreements, and the fiscal procedures agreements (which govern the grants under section 211) are to be the basis for such fiscal procedures, unless otherwise agreed by the U.S. and the FSM or RMI, respectively.

Question b. Who will sign the grants on behalf of the United States after 2023?

Answer. As noted above in answer to 17(a), there is no requirement that the proceeds from the trust funds be disbursed to the FSM and RMI through grants.

Question c. How will funds flow from the Trust Fund to the FAS—will they pass through the Department of the Interior?

Answer. They will not pass through the Department of the Interior. They will be disbursed to the governments of the FSM and RMI in accordance with the Trust Fund Agreements.

Question d. How will the funds be invested?

Answer. The U.S., FSM and RMI have signed subsidiary agreements regarding the respective trust funds. These agreements provide that each trust fund will have a five-member governing body (three of the members are to be U.S. officers); a "trustee" selected from among trust institutions organized in the U.S. with a net worth in excess of \$100 million, at least ten years experience as a custodian of financial assets, and experience in managing trust funds of at least \$500 million that will have legal custody of the funds; and an investment advisor that will advise the

governing body on investment decisions. The trust fund subsidiary agreements contemplate investment in a full range of investment vehicles, including all stocks, bonds, and other securities issued or recognized in any United States stock exchange.

An investment strategy will be developed, respectively, by each governing body, with the help of its investment advisor. Until the governing bodies take on their official duties and consult with their investment advisors, it would be premature to predict the specifics with regard to their investment strategy and asset allocation.

Question 18. What is the basis for providing an inflation adjustment based on 2/3 of a percent change in the U.S. GDP Implicit Price Deflator, under sections 217/218, as opposed to a full percent change?

Answer. The Compact, approved by Congress as the Compact of Free Association Act of 1985, established the formula for indexing certain portions of the Compact annual assistance and compensation based on the two thirds calculation. Over the past seventeen years of Compact funding, none of the assistance and compensation has ever been indexed to the full rate of inflation.

In formulating its policy for providing another twenty years of such assistance and compensation, the Administration decided to retain the formula from the original Compact. The purpose of the partial, rather than full, adjustment is to contribute to the transition of the FSM and RMI away from dependence on U.S. assistance.

Question 19. What will be the investment strategy for the Trust Fund—What are the permitted and prohibited types of investment and who will be making the investment decisions?

Answer. Please see the answer to question 17(d) above.

Question 20. What was the basis for using the United States Gross Domestic Product Implicit Price Deflator for the inflation adjustment instead of the Consumer Price Index which is the indicator used for Social Security?

Answer. The Compact, approved by Congress as the Compact of Free Association Act of 1985, established the formula for indexing certain portions of the Compact annual assistance and compensation based on the two thirds of the United States Gross Domestic Product Implicit Price Deflator calculation. In formulating its policy for providing another twenty years of such assistance and compensation, the Administration decided to retain formula from the original Compact. The purpose of the partial, rather than full, adjustment is to contribute to the transition of the FSM and RMI away from dependence on U.S. assistance.

Question 21. Section 232 of the proposal states that the Comptroller General of the U.S. shall have such powers and authorities as described in sections 102(c) and 110(c) of P.L. 99-239, but the proposal deletes these two subsections and replaces them with 102(b)(1). Is a correction needed to clarify Comptroller General authority?

Answer. As signed, the amended Compacts make reference to P.L. 99-239. Once P.L. 99-239 is revised, we would expect to reach agreement with the FSM and RMI to make a technical correction to section 232 of the amended Compacts.

Question 22. Section 103(d)(1) of P.L. 99-239 states that it is the policy of the U.S. Congress that the RMI Government is required to pay landowners of Kwajalein in accordance with the October 19, 1982 land use agreement. Why does the proposal delete this provision?

Answer. Section 103(d)(1) of P.L. 99-239 is obsolete. The U.S. and RMI have signed an amended Military Use and Operating Rights Agreement (MUORA). The October 19, 1982 land use agreement (LUA) does not reflect the amendments to the MUORA. The Government of the Republic of the Marshall Islands needs to reach an agreement with the Kwajalein landowners that reflects the changes to the MUORA. The policy of the United States is that both the government of the Republic of the Marshall Islands and the Kwajalein landowners must fulfill their obligations with respect to U.S. use of Kwajalein under the revised MUORA.

Question 23. Section 103(d)(2) of P.L. 99-239 presents Congressional policy guidance to the Government of the United States in the event that the RMI Government fails to make land use payments. Why does the proposal delete this policy guidance?

Answer. See answer to question 22, above.

Question 24. The current land use agreement between the RMI and the landowners has a term that extends until 2016. If Congress were to approve the proposed Compact amendments and the proposed MUORA changes, would that not, in effect, alter the terms of this existing land use agreement and possibly trigger a legal dispute between the parties to that existing and on-going agreement?

Answer. The U.S. is not a party to the Land Use Agreement (LUA). The LUA is between the RMI Government and the relevant landowners on whose land the U.S. defense sites are located. Nobody but the parties to the existing LUA can make changes to it. It is true, however, that if the proposed Compact amendments and MUORA changes take effect without the Government of the Republic of the Mar-

shall islands and landowners having reached an agreement that reflects the Compact and MUORA amendments, there will be a shortcoming between, on the one hand, U.S. and GRMI rights and responsibilities under the amended Compact and MUORA and, on the other, the GRMI and landowner rights and responsibilities under the LUA. The RMI Government has pledged to work out an arrangement with the Kwajalein landowners to revise the LUA to reflect the U.S.-RMI amended Compact and MUORA.

Question 25. When Congress enacted the Compact in 1986 it compensated the FSM and RMI for the loss of certain tax and trade benefits that had been negotiated. This compensation included the extension of several domestic programs identified in Section 111(a) of P.L. 99-139.

a. in these proposed amendments, what is the basis for the availability of these compensatory programs from “shall” be made available to “are authorized” to be made available?

b. Were these amendments negotiated with the FSM and RMI, or made unilaterally by the U.S.?

Answer. The Administration’s proposal reflects the view this provision should authorize, but not mandate, availability of the listed domestic programs. This also reflects the status of the FSM and RMI as foreign sovereign states and to further their transition away from their former treatment as territories covered by U.S. domestic programs.

Section 111(a) is contained under Title I of P.L. 99-239, which is purely domestic legislation, as opposed to the bilateral government-to-government agreement contained in Title II of that public law. Therefore, this provision was not negotiated with the FSM or RMI.

Question 26. As a further part of this compensation package for the loss of tax and trade benefits, the Congress authorized, in Sec. 111(d), up to \$60 million in further compensation and provided that the FSM and RMI may submit reports to the Congress concerning the overall impact of the loss.

a. In these proposed amendments, what is the basis for repealing this authorization for additional compensation?

b. Were these amendments negotiated with the FSM and RMI, or made unilaterally by the U.S.?

Answer. The Administration is not proposing to repeal this authorization. The FSM and RMI have failed to make the case for compensation under this provision. The Administration proposal extends the authorization to give the FSM and RMI one final year in which to make their case.

Section 111(d) is contained under Title I of P.L. 99-239, which is purely domestic legislation, as opposed to the bilateral government-to-government agreement contained in Title II of that public law. Therefore, this provision was not negotiated with the FSM or RMI.

APPENDIX II

Additional Material Submitted for the Record

STATE OF HAWAII,
EXECUTIVE CHAMBERS,
Honolulu, HI, July 7, 2003.

Mr. NIKOLAO PULA,
Director, Office of Insular Affairs, U.S. Department of the Interior, Office of the Secretary, Washington, DC.

DEAR MR. PULA: I am sending you our annual report* on the impact of the Compacts of Free Association with the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, for your transmittal to Congress in accordance with section 103(e)(3) of P.L. 99-239, as amended by P.L. 106-504.

Hawaii continues to feel a tremendous pressure on our resources as a result of the Compact. The issues addressed in our previous annual reports continue to be problematic, and the strain on our limited resources is growing as migration to Hawaii from the Compact nations increases.

To put in perspective the impact of the Compact migrants on the State, it is important to remember that Hawaii has one of the highest costs of living in the country. According to a recent study commissioned by the Hawaii State Commission on the Status of Women, many families in Hawaii cannot afford housing, food, childcare, or other basic needs.¹ As you know, a high percentage of the Compact migrant population are poorly educated and live in poverty,² and are thus part of the additional demand on the already strained social support systems of the State.

Please also keep in mind that the data included in this report is not comprehensive and can really only be considered a portion of the actual costs to the State. For instance, there is evidence of increased need for outreach services by the Honolulu Police Department to identify and respond to gang-related problems within the migrant communities, and hours expended by social workers to address concerns of child abuse and neglect and domestic violence among the migrant populations.³ These costs are not included in the data because the nature of the problem is not easily quantified, or they are incidental to other costs not the result of direct financial aid to the Compact migrants. Despite the imprecise and anecdotal nature of the measure of these costs, they are nevertheless real costs to the State in terms of time and resources expended toward servicing the Compact migrant population.

For 2002, Hawaii expended over \$32 million in assistance to Compact migrants. Since we began reporting in 1997, Hawaii has identified over \$140 million of cumulative financial impact to the State. While I am glad to note that we received \$4 million in 2001 as a grant to the Department of Education, clearly that is nowhere near the support needed in order to continue providing the current level of services to the migrant population.⁴

Compact migrants continue to have an extraordinary impact on the education system in Hawaii. The number of Compact migrants in 2002 increased 32% in the pri-

* Retained in committee files.

¹ Self-Sufficiency Standard Report, dated April 9, 2003, by Diana Pearce, Ph.D. with Jennifer Brooks; a project of the Wider Opportunities for Women program; available on-line at www.sixstrategies.org.

² General Accounting Office, Foreign Relations: Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Marianas Islands, October 2001.

³ These and other "hidden" costs were discussed in meetings held on April 21, 2003 with various state and private agencies, coordinated by the Department of the Attorney General and staff members for the Congressional delegates from Hawaii.

⁴ The Department of Education alone has reported an accumulated total of more than \$96 million based on data compiled since 1988. (See, Exhibit A-1).

mary and secondary school systems. This resulted in a cost of over \$18 million for the academic year 2002-2003. (Exhibit A-1). That figure is based on an average cost to educate a child in the public schools, and does not include the additional costs for special services required for this population. For instance, a majority of the migrant students come to the classroom with inadequate preparation and poor English language skills; 1,721 of the 2,381 Compact migrant students identified in our public schools were enrolled in the English as a Second Language Program. (Exhibits A-1 to A-2).

The demands on our higher education system increased as well. For fiscal year 2002, there were 669 students from Compact nations enrolled in the University of Hawaii system.⁵ These students pay resident tuition rather than non-resident tuition and, as a result, the University of Hawaii realized \$1,346,514 in foregone revenue for the academic year. (Exhibits B-1 to B-4). Paying non-resident tuition would be prohibitive for these students coming from such poor families. Requiring them to pay non-resident tuition would effectively bar them from attending college.

After education, the Department of Human Services ("DHS") shows the next highest impact, providing a broad range of social services to Compact migrants. The largest expenditures reported by DHS include Financial Assistance (\$4,521,240), and Medical Assistance (\$6,746,008). (Exhibit C-1). The number of Compact migrants DHS reports servicing for 2002 increased almost 20% from the previous year. (Exhibit C-2).

The costs to the Department of Health ("DOH") also continue to rise as DOH provides health care services to an increasing number of Compact migrants, many of whom have severe and specialized health care needs. DOH reports major expenditures for the Communicable Disease Branch (\$490,576), Community Health Services (\$298,244); and contracts to provide medical care to the uninsured (\$240,000). (Exhibit D-1).

The Department of Labor and Industrial Relations ("DLIR") also provides social services to a growing number of Compact migrants: DLIR provides services primarily through two of its state funded programs, the Employment Core Services for Immigrants (ECSI), and the Youth Services for Immigrants (YSI). ECSI provides specialized employment services that address the particular employment needs of immigrants, including language, acculturation, job preparation, and search assistance, and family support services to wage earners. The YSI program provides bilingual services for at-risk immigrant youth to assist low-income immigrant youth in: 1) overcoming cultural and language barriers in school, at home, and in their community; 2) improving their understanding and adaptation to American culture; and 3) preparing older youth for employment.

For fiscal year 2001, DLIR estimates it served 127 Compact migrants at a cost of over \$60,000.⁶ For fiscal year 2002, the cost is estimated at over \$96,000, and includes services provided to 101 Compact migrants. (Exhibit E). Current observations from DLIR indicate that both the number of Compact migrants and the cost of servicing them are expected to increase for fiscal year 2003.

The increasing number of migrants continues to impact the State's criminal justice system. According to figures provided by the Hawaii Criminal Justice Data Center, 512 adult Compact migrants were arrested on a total of 759 charges. Those arrests resulted in 160 convictions on a total of 203 charges.⁷ (Exhibit F).

The Department of Public Safety has estimated a cost of \$300,000 for the 64 incarcerated Compact migrant adults. The Office of Youth Services reports that three minors from Compact nations were incarcerated at the Hawaii Youth Correctional Facility in 2002, at a cost of over \$59,000. (Exhibit C-5). Neither the adult nor juvenile data takes into account the specialized needs that Compact migrants may have for support services within the corrections systems. Additional unreported costs may include counseling, probation, drug treatment, and court ordered domestic violence education.

The increase in cases involving Compact migrants before the courts has increased the need for interpreters for those Compact migrants who tend to come with a background of poor education, and generally have limited English language skills. The State of Hawaii Judiciary indicates that identifying qualified interpreters for Compact migrants is difficult due to the close-knit communities formed by the migrants, which results in a relatively small pool of neutral interpreters. Retention of the

⁵The University of Hawaii system includes UH-Manoa, UH-Hilo, UH-West Oahu, and the community colleges.

⁶The reported figure is believed to be lower than what was actually expended, as some of the contracted service providers were not able to provide data.

⁷Specific arrest and conviction information is not available for Compact migrant juveniles in the Hawaii court system.

qualified interpreters is also a problem due to the transient nature of the migrant population. For 2001, the Judiciary reported a cost of \$5,930 for interpreting services to Compact migrants. That figure jumped dramatically in 2002, to \$14,560. (Exhibit G).

I understand that the Department of the Interior is proposing an annual compensation package of \$15 million to address the currently nonexistent reimbursement to the State. I am also aware, however, that the amount proposed would be a small proportion of the total annual costs, and would not adequately remediate the previously reported expenditures. Additionally, I understand the \$15 million would be shared proportionally with Guam and the Commonwealth of the Northern Marianas Islands, based upon a census of the Compact migrants in each of our jurisdictions.

Naturally, I would support any measure of relief that the Federal government would consider. However, I request that the proposed appropriation be increased to take into consideration the actual cost to the State, realizing that in many instances they are most likely underreported due to inherent problems of record-keeping and the fact that many of the costs are not easily quantifiable or reportable. The proposal should also consider the increase in the number of migrants to Hawaii as well as the increased cost to service more of the Compact migrants which we expect in future. Finally, the proposal should also include an appropriate amount to address the enormous past expenditures that have strained our State's limited resources.

In closing, I urge the Congress to honor the terms of the Compacts intended to alleviate adverse effects on the State, and to act "sympathetically and expeditiously" in adopting the proposal once it is made. I request that Congress assist Hawaii by appropriating enough money to adequately compensate the State for the costs already incurred in meeting the needs of the Compact migrants, and for those costs expected to be incurred in the future, in order that we can continue to provide services to the Compact migrants, and to all of the people of Hawaii.

Sincerely,

JAMES R. AIONA JR.,
Acting Governor.

for

LINDA LINGLE,
Governor of Hawaii.

STATEMENT OF THE PEOPLES OF BIKINI, ENEWETAK, RONGELAP AND UTRIK

I. INTRODUCTION

Mr. Chairman, thank you for giving the peoples of the four atolls of Bikini, Enewetak, Rongelap and Utrik the opportunity to testify on House Joint Resolution (H.J.R.) 63, a bill to reauthorize the Compacts of Free Association with Micronesia and the Marshall Islands.

The most remarkable aspect of the testimony of Mr. Short, the U.S. Compact negotiator, is that a Congressman or legislative aide new to this area can read the entire statement and never realize that the United States conducted 67 atmospheric nuclear tests in the Marshall Islands between 1946 and 1958, that some of our people were irradiated by fallout and others moved from their islands, and that lingering radiation has forced thousands of us to remain exiles from our atolls nearly 60 years after the testing program began.

The nuclear legacy in the Marshall Islands remains the proverbial elephant at the garden party. It's there, everyone knows it, but no one talks about it. Not one word appears on this topic in the U.S. Government's statement. Indeed, this opportunity to submit testimony today before Congress constitutes a greater recognition to the peoples of the four atolls than that accorded by the executive branch, which, under both the Clinton and Bush Administrations, has not seen fit to include issues from the nuclear testing program in the Compact negotiations. The legacy of these tests, like radiation, still lingers in the islands after more than half a century and will not go away.

The silence of the Executive Branch on nuclear claims in its statement before this Committee is consistent with the refusal of the U.S. negotiators to address nuclear claims issues in the Compact renewal negotiations. What is not consistent is that after imposing a blackout on these issues in the negotiations, the U.S. Government is attempting in its legislative proposal to insert language that is prejudicial to the orderly implementation of the nuclear claims settlement still in effect under Section 177 of the Compact. The failure of the Administration to disclose this to the Com-

mittee in its testimony is surprising, to say the least, and seems to us to do a disservice both to the Congress and to the Compact renewal approval process.

II. BACKGROUND ON NUCLEAR TESTING PROGRAM IN THE MARSHALL ISLANDS

The saga of the U.S. nuclear testing program in the Marshall Islands has been recounted in great detail in dozens of government reports, Congressional hearings, histories and films. A brief summary is as follows: The people of Bikini were moved off their atoll by the U.S. Navy in 1946 to facilitate Operation Crossroads, the world's fourth and fifth atomic bomb explosions. The people of Enewetak were moved off their islands the next year to prepare for a second series of atomic tests. In the 12-year period from 1946-1958, when the Marshall Islands was a United Nations Trust Territory administered by the United States, the United States conducted 67 atomic and hydrogen atmospheric bomb tests in islands, with a total yield of 108 megatons, which is 98 times greater than the total yield of all the U.S. tests in Nevada. Put another way, the total yield of the tests in the Marshall Islands was equivalent to 7,200 Hiroshima bombs. That works out to an average of more than 1.6 Hiroshima bombs per day for the 12-year nuclear testing program in the Marshalls.

Radioactive fallout from one of those tests—the March 1, 1954 Bravo shot at Bikini—drifted in the wrong direction and irradiated the 236 inhabitants of Rongelap and Utrik Atolls as well as the crew of a Japanese fishing vessel. Bravo, the largest U.S. nuclear test in history with an explosive force equal to nearly 1,000 Hiroshima-type atomic bombs, touched off a huge international controversy that eventually led to the U.S. moratorium on atmospheric nuclear testing and the U.S.-U.S.S.R. Limited Nuclear Test Ban Treaty.¹ President Eisenhower told a press conference in late March that U.S. scientists were “surprised and astonished” at the test, and a year later the Atomic Energy Commission (AEC) admitted that about 7,000 square miles downwind of the shot “was so contaminated that survival might have depended upon prompt evacuation of the area. . . .”² Put another way, if Bravo had been detonated in Washington, DC, and the fallout pattern had headed in a northeast direction, the entire population from Washington to New York would have been killed, while near-lethal levels of fallout would stretch from New England to the Canadian border.³

The statistics 57 years after testing began:

- The Bikinians have been exiled from their homeland since 1946, except for a brief period after President Johnson announced in 1968 that Bikini was safe and the people could return. Many of the islanders returned and lived there until 1978, when medical tests by U.S. doctors revealed that the people had ingested what may have been the largest amounts of radioactive material of any known population, and the people were moved off immediately. What went wrong? An AEC blue-ribbon panel, in estimating the dose the returning Bikinians would receive, relied on an erroneous calculation by one of their scientists, which threw off their calculations by a factor of 100. “We just plain goofed,” the scientist told the press.⁴
- The people of Enewetak were exiled from the southern islands of their atoll for 33 years, and approximately half the population (the Enjebi people) still cannot return to their home islands in the northern part of Enewetak Atoll because those islands remain too radioactive 56 years after they were first moved.
- Today, a nuclear waste site containing over 110,000 cubic yards of radioactive contaminants, known as the Runit Dome, remains on Enewetak Atoll.
- At least four islands at Bikini and five at Enewetak were completely or partially vaporized during the testing program, and many others were heavily contaminated with radiation.
- Although they were 100 miles from Bikini, the people of Rongelap received a radiation dose from Bravo equal to that received by Japanese people less than two miles from ground zero at Hiroshima and Nagasaki. They displayed all the classic symptoms of radiation poisoning—hair loss, skin lesions, and lowered white blood cell counts. All but two of the nineteen Rongelapese who were under ten years old at the time of Bravo developed abnormal thyroid nodules,

¹ See, e.g., Peter Pringle and James Spigelman, *The Nuclear Barons* (Holt, Rinehart and Winston 1981) pp. 243-59.

² *New York Times*, March 25, 1954, pp. 1, 18.

³ Jonathan M. Weisgall, *Operation Crossroads: The Atomic Tests at Bikini Atoll* (Naval Institute Press 1994), pp. 304-05.

⁴ *Los Angeles Times*, July 23, 1978, p. 3.

and there has been one leukemia death.⁵ The people were moved off the islands for three years after the Bravo shot, and they moved off again in 1985 amid concerns about radiation dangers.

- The 236 inhabitants of Rongelap and Utrik have required regular medical care by U.S. doctors since the time of the Bravo shot.
- The people of Utrik were returned to their home atoll a mere three months after Bravo and were exposed to extremely high levels of residual fallout in the ensuing years. This unnecessary exposure led to many thyroid problems and other cancers.

No inkling of these facts is even suggested by the U.S. Government's testimony. As far as the U.S. negotiators are concerned, these events have been previously dealt with and are now relegated to the trash bin of history.

III. 1980S COURT CASES AND THE COMPACT

In the 1980s, the peoples of the four atolls and other island groups brought lawsuits against the United States for property and other damages totaling more than \$5 billion. In the Bikini case, for example, in which more than 300 pleadings were filed in seven years, the trial judge denied the U.S. Government's motion to dismiss the case and set a trial date before the U.S. and Republic of the Marshall Islands (RMI) Governments signed the Compact and the subsidiary Section 177 Agreement, which established a \$150 Nuclear Fund, income from which was earmarked for the peoples of the four atolls and for other programs related to the legacy of the nuclear testing program "as a means to address past, present, and future consequences of the Nuclear Testing Program."⁶ In addition, approximately \$3 million annually of the income generated by the Nuclear Fund went to the Nuclear Claims Tribunal, which was established under the Agreement with "jurisdiction to render final determination upon all claims past, present and future, of the Government, citizens, and nationals of the Marshall Islands which are based on, arise out of, or are in any way related to the Nuclear Testing Program."⁷

The Section 177 Agreement also provides that it constitutes the full settlement of all claims, "past, present and future," of Marshall Islanders and their government against the United States arising out of the testing program, and another section provides that all such claims pending in U.S. courts are to be dismissed.⁸

Faced with these provisions, Judge Harkins of the U.S. Claims Court dismissed the nuclear cases after the Compact went into effect, but he emphasized that "in none of these cases has Congress abolished plaintiffs' rights. The Compact recognizes the United States obligations to compensate for damages from the nuclear testing program and the Section 177 Agreement establishes an alternative tribunal [the Nuclear Claims Tribunal] to provide such compensation."⁹ He repeated this point several more times: "Plaintiffs are not deprived of every forum. An alternative tribunal to provide compensation has been provided."¹⁰

In this regard, Judge Harkins recognized the obvious point that Congress cannot close the doors of U.S. courts for a constitutional taking claim. As the noted constitutional scholar Gerald Gunther wrote, "[A]ll agree that Congress cannot bar all remedies for enforcing federal constitutional rights."¹¹ Congress can, however, close the doors of U.S. courts if it provides for an alternative method of compensation, but the exercise of this power, as noted by the U.S. Supreme Court, is subject to the overriding requirement that when property is taken for public use "there must be at the time of taking 'reasonable, certain and adequate provision for obtaining compensation.'"¹²

For example, the plaintiff in *Dames & Moore v. Reagan* contended that the suspension of its pending claims against Iran under the agreement for the release of the U.S. hostages was an uncompensated taking. It also argued that the alternative forum provided by that agreement, the U.S.-Iran Claims Tribunal, would not pro-

⁵ Edwin J. Martin and Richard H. Rowland, *Castle Series* (Defense Nuclear Agency Report No. 6035F 1954), pp. 3, 235; Robert A. Conard et al., *A Twenty-Year Review of Medical Findings in a Marshallese Population Accidentally Exposed to Radioactive Fallout* (Brookhaven National Laboratory 1974), pp. 59-76, 81-86).

⁶ Compact Section 177 Agreement, Article I, Section 2.

⁷ *Id.*, Article IV, Section 1(a).

⁸ *Id.*, Articles X and XII.

⁹ *Juda v. United States*, 13 Cl.Ct. 667, 688 (1987).

¹⁰ *Id.* at 689.

¹¹ Gunther, "Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate," 36 *Stan.L.Rev.* 895, 921 n. 113 (1984).

¹² *Blanchette v. Connecticut General Insurance Corp.*, 419 U.S. 102, 124-25 (1974), quoting *Cherokee Nation v. Southern Kansas Railroad Co.*, 135 U.S. 641, 659 (1890).

vide “reasonable, certain and adequate provision for obtaining compensation,” because some claims might not be paid in full or not even be adjudicated. The Supreme Court found that the U.S.-Iran Tribunal was an adequate alternative forum and therefore upheld the agreement, noting, however, that the Claims Court remained open under the Tucker Act “to the extent petitioner believes it has suffered an unconstitutional taking by the suspension of the claims.”¹³

Judge Harkins agreed with this standard, but he found that the “settlement procedure, as effectuated through the Section 177 Agreement, provides a ‘reasonable’ and ‘certain’ means for obtaining compensation.” However, he was not so sure about whether the procedure would provide adequate funding: “Whether the compensation in the alternative procedures . . . is adequate is dependent upon the amount and type of compensation that ultimately is provided through these procedures.” In essence, he imposed an “exhaustion of remedies” test for the claimants: Because the Nuclear Claims Tribunal was not yet in existence, he held that “[w]hether the settlement provides ‘adequate’ compensation cannot be determined at this time. . . . This alternative procedure for compensation cannot be challenged judicially until it has run its course.”¹⁴

On appeal, the U.S. Court of Appeals for the Federal Circuit reached a similar conclusion: “Congress intended the alternative procedure [the Nuclear Claims Tribunal] to be utilized, and we are unpersuaded that judicial intervention is appropriate at this time on the mere speculation that the alternative remedy may prove to be inadequate.”¹⁵

Fifteen years have passed since that court’s decision, and history has shown that the peoples of the four atolls were right: The Nuclear Claims Tribunal has “run its course” and is not capable of providing adequate compensation. After lengthy trials, it awarded \$386 million to the people of Enewetak for loss of use, restoration, and hardship, and \$563 million to the people of Bikini, but it has paid out less than one-half of one percent of these awards. The Tribunal, which has also paid out nearly \$67 million in personal injury awards, has less than \$10 million on hand, and it has yet to issue awards in the just-concluded cases brought by the peoples of Rongelap and Utrik. These circumstances are different from those in the *Dames & Moore* case, where the alternative system of relief—the U.S.-Iran Claims Tribunal—was appropriate because it was “capable of providing meaningful relief.”¹⁶ Here, the remedy was simply not adequate.

Everyone involved in the political status talks in the 1970s and 1980s knows that the \$150 million payment under Section 177 was just that—a political payment to help redress the nuclear legacy. No one at that time knew the full costs of cleanup, much less the extent of radiological illnesses and damage or the value of past takings of land. That is precisely why the Nuclear Claims Tribunal was established. Its role has been to assess the extent of damage and injury from the U.S. testing program.

IV. BONA FIDES OF THE NUCLEAR CLAIMS TRIBUNAL

Before discussing a possible Congressional solution to this dilemma, it may be useful to address head-on two contentious questions: First, was the Nuclear Claims Tribunal process valid or did the “home field” advantage result in skewed and inflated awards? Second, how should Congress deal with what some describe as the “sticker shock” of these awards?

As to the first question, an independent investigation of the Nuclear Claims Tribunal conducted by former U.S. Attorney General Dick Thornburgh (“Thornburgh Report”) concluded in January 2003 that:

- The Nuclear Claims Tribunal fulfilled the basic functions contemplated by the U.S. Congress under the Compact.
- Tribunal personnel were qualified to perform their functions and have had access to the resources they needed.
- The Tribunal has conducted its business in an orderly manner, following rules and procedures that closely resemble those used by legal systems in the United States.
- Property damage claims before the Tribunal have been asserted through class action vehicles similar to those used in the United States, with litigation “characterized by the kind of legal briefing, expert reports, and motion practice that

¹³ 453 U.S. 654, 689 (1981).

¹⁴ *Juda v. United States*, *supra*, 13 Cl.Ct. at 689.

¹⁵ *People of Enewetak, Rongelap and other Marshall Islands Atolls v. United States*, 864 F.2d 134, 136 (Ct. App. Fed. Cir., 1988).

¹⁶ *Dames & Moore*, 453 U.S. at 687.

would be found in many U.S. court proceedings,” and hearing procedures and rules of evidence that resemble those used in administrative proceedings in the United States.¹⁷

- The Tribunal relied heavily on U.S. legal authorities in reaching its decisions on damages issues.
- Although the Marshall Islands parliament, the Nitijela, occasionally sought to influence the Tribunal’s work, particularly in expanding the range of persons eligible to receive personal injury awards, “any such interference had not more than a modest impact on the total dollar amount of the Tribunal’s awards.”¹⁸

V. NUCLEAR CLAIMS TRIBUNAL AWARDS FOR LOSS OF USE AND RESTORATION OF LANDS

As to the amount of the Tribunal’s awards, we wish to bring the following points to the attention of this Committee:

- The people of Bikini presented cleanup options that ranged as high as \$1 billion, involving the scraping of all the radioactive soil off the atoll and replacing it with non-radioactive soil. The restoration option selected by the Tribunal—scraping the soil only in the living area of Bikini Island and treating the rest with potassium-rich fertilizer to block the uptake of radioactive material—is exactly the cleanup method recommended by the U.S. Department of Energy’s environmental contractor, Lawrence Livermore National Laboratory, and the cost was set at just over \$250 million.
- These cleanup costs must be considered in the context of the cost of the tests themselves. The Defense Department costs alone just for the two shots of Operation Crossroads were \$1.3 billion in 1996 dollars, and total Defense Department costs for all shots in the Marshall Islands exceeded \$4.3 billion.¹⁹ (All dollar amounts in this paragraph are in 1996 dollars.) Civilian costs are harder to calculate, but some numbers are known. For example, in transferring its materials, facilities and properties to the new AEC in 1946, the Manhattan Project spent \$3.1 billion to manufacture nine new atomic bombs and continue research into thermonuclear weapons.²⁰ The AEC spent over \$3.5 billion from July 1, 1946 through June 30, 1947,²¹ and from 1948-1958, the AEC spent approximately \$106 billion on production research, development, and testing of nuclear weapons.²²
- The United States never questioned the cost or value of the nuclear tests at Bikini and Enewetak, because they assured U.S. nuclear superiority over the Soviet Union and led to immediate savings of billions of dollars in the Defense Department budget in the late 1940s and 1950s. Just the first two tests at Bikini led to a greater emphasis on atomic warfare than on more expensive conventional weapons and troops.²³ As the AEC told Congress: “Each of the tests involved a major expenditure of money, manpower, scientific effort and time. Nevertheless, in accelerating the rate of weapons development, they saved far more than their cost.”²⁴
- Congress clearly knew that the \$150 million trust fund under the Section 177 Agreement was a political number arrived at to settle the Claims Court lawsuits, because it also left the door open for other funding programs for the four atolls in the Compact. The Compact Section 177 Agreement limits the Nuclear Fund to \$150 million and states that it constitutes the full settlement of all claims arising out of the nuclear testing program, but after passage of this language Congress continued to fund various programs. For example:

Section 103(h)(2) of the Compact of Free Association Act (Pub. L. 99-239) (the “Act”) established the Enewetak Food and Agriculture Program, which Congress has funded for 17 years at an annual amount of between \$1.1 and \$1.7 million because it recognized the challenge of providing food to the Enewetak people. That program involves soil rehabilitation and revegetation of the land with tra-

¹⁷Dick Thornburgh et al., “The Nuclear Claims Tribunal of the Republic of the Marshall Islands: An Independent Examination and Assessment of its Decision-Making Process” (Kirkpatrick & Lockhart, LLP 2003), p. 2.

¹⁸*Id.*

¹⁹Stephen I. Schwartz, ed., *Atomic Audit: The Costs and Consequences of U.S. Nuclear Weapons Since 1940* (Brookings Institution Press 1998), pp. 101-03.

²⁰*Id.* at 61-62.

²¹*Id.* at 63.

²²*Id.* at 65-75.

²³*See, e.g.,* Weisgall, *Operation Crossroads*, *supra* n. 3 at 279-87.

²⁴U.S. Atomic Energy Commission, *Thirteenth Semiannual Report of the Atomic Energy Commission* (1953), p. 18.

ditional food bearing crops, importation of food, and the operation of a vessel to bring the food and agricultural materials to Enewetak.

Section 103 (i) of the Act authorized funding for the radiological cleanup of Rongelap Island, and Congress subsequently appropriated \$40 million for a Rongelap resettlement trust fund.

Article VI of the Section 177 Agreement provides that the United States “reaffirms its commitment to provide funds for the resettlement of Bikini Atoll . . . at a time which cannot now be determined,” and Section 103 (l) of the Act declares that “it is the policy of the United States . . . that because the United States . . . rendered Bikini Atoll unsafe for habitation . . . , the United States will fulfill its responsibility for restoring Bikini Atoll to habitability. . . .” After the Compact went into effect, Congress appropriated an additional \$90 million for the radiological cleanup of Bikini Atoll. See Pub. L. No. 100-446.

- The \$150 million trust fund established under the Section 177 Agreement was provided to cover payment of claims for injuries, damages and losses known in 1986, based on information available at that time. However, recognizing that additional compensation might be required, U.S. negotiators and Congress agreed to an extraordinary statutory right for the RMI to present additional claims directly to Congress based on injuries, damages and losses discovered or determined subsequent to 1986. Article IX of the Agreement, entitled “Changed Circumstances,” provides that if property or personal injury losses resulting from the Nuclear Testing Program are discovered after the effective date of the Agreement, “were not and could not reasonably have been identified as of the effective date” of the Agreement, and “if such injuries render the provisions of this Agreement manifestly inadequate,” the RMI Government may submit a request directly to Congress to provide for such injuries. The RMI submitted such a petition to Congress in 2000 and again in 2001, and sixteen months ago the top leadership in the Senate Energy Committee and House Resources Committee asked the Bush Administration to review and report back on the petition.
- The Department of Energy’s Environmental Management Program Budget, which is earmarked for the cleanup of radioactive, chemical and other hazardous waste at 53 U.S. nuclear weapons production and development sites in 23 states, dwarfs the numbers under consideration here. Five years ago, that cleanup program was estimated to cost nearly \$147 billion.²⁵ Congress appropriated an average of \$5.75 billion annually for the program in the late 1990s, and it is anticipated that this funding level will continue at this rate indefinitely.²⁶
- Since 1991 the U.S. Government, through DOE’s Environmental Management Program, has spent more than \$10 billion at the Hanford, Washington nuclear weapons site without removing one teaspoonful of contaminated soil.²⁷ That is what DOE has spent on studying the problem. The Bikini and Enewetak cleanup numbers sound big, but they look like a bargain compared to what the United States spends on its own sites—sites that were exposed to a tiny percentage of the radiation that was unleashed in the Marshall Islands.
- The U.S. Government has already approved compensation claims of more than \$562 million under the Downwinders’ Act by people injured as a result of nuclear tests in Nevada that were nearly 100 times smaller in magnitude than the tests conducted in the Marshall Islands.²⁸
- As the Thornburgh Report noted, “[I]t is our judgment that the \$150 million trust fund initially established in 1986 [under the Compact] is manifestly inadequate to fairly compensate the inhabitants of the Marshall Islands for the damages they suffered as a result of the dozens of U.S. nuclear tests that took place in their homeland.”²⁹

VI. PROPOSED LEGISLATIVE SOLUTION

The RMI and leaders of Bikini, Enewetak, Rongelap and Utrik have requested an amendment to the Compact of Free Association that grants narrowly defined jurisdiction to the U.S. Court of Appeals for the Federal Circuit to review the judgments of the Nuclear Claims Tribunal and to order the United States to pay these judg-

²⁵ *Accelerating Cleanup: Paths to Closure* (U.S. Department of Energy, Office of Environmental Management) (June 1998) at 2, 5.

²⁶ *Id.* at 8. See also Environmental Management: Program Budget Totals (FY 1998–FY 2000) and Environmental Management’s FY 2000 Congressional Budget Request.

²⁷ *Environmental Management: Progress & Plans of the Environmental Management Program* (November 1996) (DOE/EM-0317) at 120.

²⁸ Thornburgh Report, *supra* n. 17 at 3

²⁹ *Id.*

ments (after deducting the compensation already received by the claimants from the Nuclear Claims Tribunal) unless it finds, after a hearing, that a particular judgment “is manifestly erroneous as to law or fact, or manifestly excessive.” The provision also makes the U.S. Government party to the case, thus giving it standing to oppose partially or entirely the awards adjudicated by the Nuclear Claims Tribunal.³⁰

The peoples of the four atolls and the RMI Government urge the Congress to give careful consideration to this proposal for following reasons:

1. This proposal would resolve major components of the “changed circumstances” petition.

As noted above, the Section 177 Agreement’s changed circumstances provision (Article IX) states that the RMI Government may petition Congress if it believes developments since the settlement was approved render the assistance and compensation provided “manifestly inadequate.” There is no precise definition of what exactly constitutes a “changed circumstance,” but by adopting this proposal the U.S. Congress can make the major part of the changed circumstances petition end up where it started—in the courts, which, on a daily basis, deal with factual and legal issues concerning damage claims.

2. This proposal would help to resolve the outstanding legal flaw in the Compact 177 scheme.

As explained above, the Section 177 Agreement provided the peoples of the four atolls with a \$150 million Nuclear Fund, now nearly exhausted, which is far less than the value of their claims. The liability of the U.S. Government for damages resulting from the nuclear testing program has never been an issue. Indeed, Section 177(a) of the Compact specifically states that the “Government of the United States accepts responsibility for compensation owing to the citizens of the Marshall Islands . . . for loss or damage to property and person . . . resulting from the nuclear testing program. . . .” The only question was how to resolve those claims and how much compensation to provide.

For the U.S. and Marshall Islands Governments, the Section 177 process served its purpose by establishing a process to resolve the value of the Marshall Islanders’ claims, a process that has now lasted more than 15 years. The results of that process have demonstrated that the \$150 million provided by the Section 177 Agreement is inadequate to meet the U.S. Government’s “accept[ance],” in Section 177, of its “responsibility for compensation owing to the citizens of the Marshall Islands” In order to implement this pledge and to fulfill the purpose of Section 177, Congress should restore federal court jurisdiction to complete the compensation process to determine whether the Nuclear Claims Tribunal’s awards are adequate and, if so, to order payment.

3. This proposal treats the nuclear legacy claims in the same manner as other pre-Trusteeship termination claims.

Under Section 174 of the Compact, the United States waives sovereign immunity for all claims arising from its previous actions as Administering Authority of the Trust Territory, other than those claims settled by the Section 177 Agreement. The four-atoll proposal closely tracks the language of Section 174 (c) and does nothing more than provide the identical treatment to the nuclear cases filed in the U.S. Claims Court in the 1980s, which were then singled out for special treatment (espousal and dismissal of claims) under the Section 177 Agreement. There is no legiti-

³⁰The text of the amendment is as follows:

Section 103(g) of United States Public Law 99-239 (99 Stat. 1775) is amended by adding a new paragraph (3) as follows:

“Judgments of the Nuclear Claims Tribunal established pursuant to Article IV of the Section 177 Agreement with respect to claims for loss or damage to property or person that have not been fully paid or otherwise satisfied may be presented for review and certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of Article X, XI, and XII of the Section 177 Agreement or 28 U.S.C. 1502, for the limited purposes set forth in this paragraph only, and which court’s decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall review such judgments, certify them and order payment thereof pursuant to 28 U.S.C. 1304, unless such court finds, after a hearing, that any such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases, the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment. In ordering payment, the Court shall take into account any prior compensation made by the Nuclear Claims Tribunal as a result of such judgment. In any such certification proceeding the Government of the United States shall stand in the place of the Defender of the Fund and shall be a party to and may oppose certification or payment of judgments of the Nuclear Claims Tribunal.”

mate reason to treat the nuclear cases differently from other claims arising out of the U.S. Government's role as Administrator of the Trust Territory, now that the Nuclear Claims Tribunal process has run its course. Unless Congress itself is prepared to determine the level of funding that must be provided to resolve the nuclear legacy claims, restoring to the federal courts the same jurisdiction they have over other claims from the Trusteeship era is morally and legally the only solution.

4. This proposal resolves a potentially difficult political dilemma for both the executive and legislative branches of the U.S. Government.

The Office of Compact Negotiations has opted to exclude nuclear legacy issues from the current negotiations. However, these issues will still be on the table if the current negotiations are concluded without addressing them; they will not go away. Congress is understandably reluctant to delve into this type of issue, given the need for a detailed review of scientific, medical and legal questions that it is simply ill-equipped to handle. It lacks the expertise and may be unwilling to tackle the issue, and the executive branch has indicated that it is unwilling to address the matter at this time. This proposal solves those problems. The Section 177 Agreement imposed a political settlement on a legal matter. This proposal returns the resolution of the nuclear legacy where it belongs—in the courts.

5. This proposal contains an alternative source of funding for the nuclear legacy issues.

By providing for U.S. Court of Appeals for the Federal Circuit review, any award upheld by that court would be paid from the Claims Court Judgment Fund established for awards against the United States and appropriated under 28 U.S.C. § 1304. ("Necessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interests and costs specified in the judgments or otherwise authorized by law") Although the funds would still come from the U.S. Treasury, this proposal creates a separate source of funding to pay these judgments, rather than looking to a specific Congressional appropriation, which is difficult to accomplish under any circumstances.

6. This proposal provides for adequate executive branch involvement in resolution of the final awards.

Some in the executive branch have questioned the validity of the Nuclear Claims Tribunal process, suggesting that the Tribunal tilted its views towards the RMI nuclear victims and acted like a "kangaroo court." (See above.) By providing that the U.S. Government stands in the place of the Defender of the Fund in any certification proceeding, this proposal will protect the role of the U.S. Government by ensuring that the Justice Department can appear to oppose payment or offer modifications to any proposed award. In addition, any new awards would be discounted by amounts already paid under the Compact.

7. This proposal is consistent with certain Compact language.

This proposal is consistent with the view of the executive and legislative branches at the time the Compact was concluded, which was that more funding might be needed to resolve issues relating to the nuclear legacy. See above, for three examples of post-Compact funding for Rongelap, Enewetak and Bikini. This proposal is consistent with the spirit of the existing Compact by recognizing that the funds provided by the Section 177 Agreement were never designed to provide total compensation owing to the peoples of the four atolls.

VII. UNILATERAL CHANGES TO COMPACT ACT

The peoples of the four atolls are in agreement with the position of the RMI Government, as stated at pp. 8-9 of Foreign Minister Gerald M. Zackios' written testimony, concerning the Administration's unilateral changes to the amended Compact Act, especially with respect to Section 103(e)(3). As noted above at page 1, if the U.S. negotiators claimed a lack of authority to negotiate nuclear legacy provisions in the Compact negotiations, where did they come up with the authority to propose unilateral changes to existing provisions involving that nuclear legacy? Congress' original language should continue to govern on the language of the Section 177 Agreement.

VIII. FUTURE STEPS

The peoples of the four atolls have long sought a seat at the table in the Compact negotiations, but we were never granted one. We also understand that H.J.R. 63 contains many other important provisions that govern all aspects of the future political, military, and economic relationship between the RMI and the United States.

Our first choice would be to amend H.J.R. 63 to insert the provision discussed above. If that is not politically feasible due to time constraints in implementing the Compact, we request that this Committee (a) make clear in its legislative history of H.J.R. 63 that it intends to deal with the nuclear legacy issues outlined in the testimony and (b) commence that process by committing to hold a hearing on these matters as soon as feasible after passage of H.J.R. 63.

Again, we appreciate your willingness to consider our views, and we and our legal representatives are available at any time to work with you and your staff.

Thank you.

STATEMENT OF CHRISTOPHER J. LOEAK, CHAIRMAN,
KWAJALEIN NEGOTIATION COMMISSION (KNC)

My name is Christopher J. Loeak, Chairman of the Kwajalein Negotiation Commission. I appreciate the opportunity to present the views of the KNC today.

Recently, I submitted testimony to the House Resources Committee and House International Relations Committee regarding the views of the KNC on the proposed agreement between the United States and the RMI with respect to a new Military Use and Operating Rights Agreement. I append that statement to the one that I submit to you today.

The position of the KNC on the proposed MUORA can be summarized by the following points:

- The compensation amounts for landowners of Kwajalein are insufficient to provide for the long-term benefit of the people of Kwajalein. The amount of compensation for the people of Kwajalein must be at least \$19.1 million in 2004 fully indexed for inflation.
- The term of the agreement is insufficient and must be made longer to adequately plan for the use of Kwajalein for our people. Although the U.S. portrays this agreement as an agreement of over 50 years duration, it only guarantees use of Kwajalein for seven years beyond 2016. Thus, the agreement is only a 7-year extension with a series of 1-year options to terminate, leaving the landowners in a state of suspended animation for years to come. This term is far worse than the present 15-year term in the present MUORA. The guaranteed term of the MUORA should be at least through 2030 with mutual termination rights after that date.
- The RMI should not be made to guarantee to the United States a "subsidized" tax rate for the duration of the MUORA. The RMI should be free to impose the national tax rate of the RMI to the expatriate workers on the Kwajalein base as it is applied throughout the country as an exercise of national sovereignty.
- The Landowners will not sign a new Land Use Agreement until and unless acceptable changes are made to the MUORA to address these deficiencies. The 7-year extension of the MUORA as proposed is legally insufficient and cannot be implemented.

In addition to these fundamental points made on behalf of the KNC, I find it incumbent upon me to also make the following points on behalf of the nation at-large with respect to the rest of the Compact.

- The unilateral changes that the U.S. Government has made to the compact documents, including the denial of the Section 177 petition and the immigration changes, are unacceptable.
- The lack of an agreement on the application of education programs through the duration of the Compact make the agreement insufficient and may even aggravate problems associated with immigration.
- FEMA coverage should be extended for the RMI. The islands are susceptible to typhoons, rising sea levels and residual pollution from nuclear tests and non-nuclear military activities. Kwajalein is the target end of a missile shot several times a year. The possibility of disaster remains for as long as tests are conducted. Civilian communities ring this target and the RMI government has neither technical nor financial capabilities to deal with such an eventuality.
- The application of Full Inflation to the Compact provisions and payments is an absolute necessity and should be specifically provided for in the agreement.

It is my opinion that if Congress does not make these changes then the Nitijela will reject the agreement when it comes up for debate in August.

Thank you for this opportunity and you can be sure that we will pursue every opportunity to reach an acceptable agreement through the constitutional processes of our respective governments.

STATEMENT OF DAVID BENCIVENGA, PRINCIPLE, NORTH PACIFIC
TRADING COMPANY

Separate "Agreements in Implementation of Section 175(b) of the Compact of Free Association" for the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) were attached to the Compact of Free Association (CFA) to impose U.S. Department of Labor (DOL) regulation of recruitment firms in those two countries.

At the outset of negotiations, the U.S. Department of State (DOS) and the FSM and RMI Governments opposed the regulations.

Accordingly, DOL officials conspired with reporters from the *Orlando Sentinel* and *Baltimore Sun* (OS&BS) to produce a series of articles entitled "Indentured in America." The DOL officials fed the reporters restricted documents that did not reflect official Government policy or investigative results. The reporters misused the documents to create the appearance of impropriety and criminal conduct when none existed.

The DOL official's goal was to influence the on-going negotiations on the CFA. The "Indentured in America" series was fabricated to bring public pressure to bear on the negotiating parties to adopt the proposed regulations.

The OS&BS claim this was accomplished. The most recent June 6 article states the "Indentured in America" story "prompted some U.S. officials to push for changes in the compact, which was then being negotiated. . . ."

The DOL never established a factual basis to justify the regulations. The DOL never sought industry comments on the regulations. The regulations contain provisions that are unduly burdensome. The regulations contain provisions that restrict normal and customary business practices. The regulations would eliminate recruitment programs in Micronesia.

Burdensome regulations include:

1. Semi-annual reporting of "the names, addresses, telephone numbers, fax numbers, and e-mail addresses" of all citizens of the RMI and FSM who are currently employed in the United States pursuant to employment arranged by the recruiter [Section B]. The recruiter does not normally have access to this information and has no legal basis to obtain it. The release of the information may violate the privacy rights of the Micronesians.

2. A list of legal rights must be disclosed to each RMI and FSM citizen written in both English and the local language [Section C.2.]. English is the common language in the RMI and FSM. Business contracts and Government documents are written in English. There are dozens of separate and distinct local languages. Any RMI or FSM citizen may speak several languages. There are no translation services in the RMI and FSM. It is simply not feasible to provide disclosure information in every local language.

Restriction of normal and customary business practice include:

1. The regulations prohibit "debt, liquidated damages, or similar arrangements" [Subsection C.2.].

2. Micronesians are provided the most favorable financial treatment of any alien worker. Recruitment services are provided to the Micronesian workers free or virtually free of charge. The airfare from Micronesia to the U.S. is provided free of charge. Training schools to obtain professional designation such as Certified Nursing Assistant are provided free of charge. The financial commitment made on behalf of each Micronesian exceeds \$5,000. In return, the Micronesians agree to a one-year or two-year period of employment with the Employing Company. If the Micronesian fails to complete the contract, then the Micronesian is to reimburse \$1,500 to \$2,500 (liquidated damages) of the \$5,000 commitment. The amount of liquidated damage is reasonably related to the commitment. The liquidated damage provision is used to simplify the legal process if the contract is breached.

3. The regulations make it clear that "failure to complete such employment contract may constitute a breach of contract with certain legal consequences (including an action for actual, but not liquidated or similar damages), depending on the circumstances" [Subsection C.3.(b)(v)].

4. Liquidated damages are simply a tool used to quantify the amount of damages in a small claims case such as this. It is a normal and customary business practice. Acknowledging that the Micronesian may be responsible for actual damages but outlawing liquidated damages is like saying you can build the house but you can't use a hammer.

5. Of the approximately 2,000 Micronesians brought to the U.S. by recruitment firms specifically mentioned in the "Indentured in America" series, the

greater majority did NOT complete the one-year or two-year employment contract. Of this “in excess of 1,000” Micronesians who failed to complete their contract, only three are known to actually be making payments toward liquidated damages.

6. Approximately \$10,000,000 was spent by private industry to make these 2,000 jobs available to Micronesians. The U.S. Government commitment toward these programs was miniscule (less than \$100,000). If the U.S., RMI and FSM Governments want this practice to continue, then ways must be found to enhance the Micronesian’s resolve to complete his contract, not weaken it. No employer will be willing to expend \$5,000 on behalf of each Micronesian unless there is a reasonable expectation that the Micronesian will complete his contract.

The stated goal of the DOL regulations is to “safeguard the rights and welfare” of the Micronesians. However, with the recruiters gone, the real result will be that many young Micronesians will lose the only opportunity they had for employment. The regulations will end up harming the very Micronesians that the DOL claims they were trying to protect.

Of course, one has to question whether leaking restricted documents to the press to create the appearance of impropriety and criminal conduct when none exists, in order to get what the DOL wanted without going through the usual and customary channels, is proper conduct for U.S. Government officials.

It is our request to the Senate Committee on Energy and Natural Resources that the “Agreement(s) in Implementation of Section 175(b) of the Compact of Free Association” be tabled or deferred pending a thorough investigation into this entire matter.